TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 15.

HERMAN KECK, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED JULY 7, 1895.

(16,330.)

(16,330.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 551.

HERMAN KECK, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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1&2 In the District Court of the United States for the Eastern District of Pennsylvania.

Pleas before the honorable the judge of said court, of May sessions, 1896, No. 20.

It is thus contained:

THE UNITED STATES OF AMERICA
vs.
HERMAN KECK. } Indictment.

Be it remembered that at a district court of the United States in and for the eastern district of Pennsylvania, holden at Philadelphia on the eighteenth day of May, A. D. 1896, before the Honorable William Butler, judge of said court, by the oaths of James J. Franey, Wm. A. Bair, Samuel H. Clark, William Endebrock, Joseph Grieves, Wm. H. Haley, Edward B. Hubley, Albert N. Hughes, Frank McCullough, George W. Mars, John I. Miller, and William H. Taggert, and by the affirmations of William W. Atkinson, John H. Bergey, Charles Conely, James Dauman, W. Parker Fine, Richard Henderson, George S. Scypes, and Henry W. Stover,
3 good and lawful men of the said district, then and there impanelled and sworn or affirmed and charged to inquire for the said United States and for the body of the said district—

It is presented as follows:

(*Bill of Indictment.*)

In the District Court of the United States for the Eastern District of Pennsylvania, May Sessions, 1896. No. 20.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

The grand inquest of the United States of America, inquiring in and for the eastern district of Pennsylvania, upon their respective oaths and affirmations respectively do present that heretofore, to wit, upon the eleventh day of February, in the year of our Lord one thousand eight hundred and ninety, one Herman Keck, late of the district aforesaid, yeoman, at the district aforesaid
4 and within the jurisdiction of this court, did knowingly, wilfully, and unlawfully import and bring into the United States and did assist in importing and bringing into the United States, to wit, into the port of Philadelphia, certain goods, wares, and merchandise, to wit, five hundred and sixty-three diamonds, of great value, to wit, of the value of ten thousand dollars, contrary to law and the provisions of the act of Congress in such cases made and provided, with intent to defraud the United States, contrary to the form of the act of Congress in such case made and provided. and against the peace and dignity of the United States of America

2. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations do further present that afterwards, to wit, upon the day and year aforesaid, the said Herman

Keck, late of the district aforesaid, yeoman, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, and unlawfully and with intent to defraud the revenue of
5 the United States smuggle and clandestinely introduce into the United States, to wit, into the port of Philadelphia, certain goods, wares, and merchandise, to wit, five hundred and sixty-three diamonds, of great value, to wit, of the value of ten thousand dollars, without paying and accounting for the duty imposed upon the said goods, wares, and merchandise by the provisions of the act of Congress in such case made and provided, which said goods, wares, and merchandise so smuggled and clandestinely introduced as aforesaid were subject to duty by law and should have been then and there invoiced, the said Herman Keck then and there well knowing that the duty due and payable upon the said goods, wares, and merchandise had not been paid and accounted for, and that the said goods, wares, and merchandise had not been invoiced as required by the provisions of the act of Congress in such case made and provided, with intent in him, the said Herman Keck, to defraud the revenue of the United States, contrary to the form of the act of Congress in such case made and provided and against the peace and dignity of the United States of America.

6 3. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations as aforesaid do further present that afterwards, to wit, upon the day and year aforesaid, the said Herman Keck, late of the district aforesaid, yeoman, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully, and fraudulently and with intent to defraud the revenue of the United States *did* import and bring into the United States, to wit, into the port of Philadelphia, certain goods, wares, and merchandise, to wit, five hundred and sixty-three diamonds, of great value, to wit, of the value of ten thousand dollars, contrary to law in that due entry was not made by the said Herman Keck of the said goods, wares, and merchandise, the said goods, wares, and merchandise being then and there clandestinely and with intent to defraud the revenue of the United States concealed by the said Herman Keck from the view and inspection of the officer of the United States duly appointed by law to examine the same, to wit, the custom-house inspector, and
7 by concealing the said goods, wares, and merchandise in a small box the said Herman Keck did not then and there particularize the contents of the said box, nor did the said Herman Keck mention the aforesaid goods, wares, and merchandise to the said officer, which said goods, wares, and merchandise were then and there subject to duty by law and should have been then and there invoiced and entered, with intent in him, the said Herman Keck, to defraud the revenue of the United States, contrary to the form of the act of Congress in such case made and provided and against the peace and dignity of the United States of America.

JAMES M. BECK,
U. S. Attorney.

18 May, 1896.

8 (*Motion of the Defendant, by His Counsel, to Quash Indictment.*)

Presented and filed May 26th, 1896.

UNITED STATES OF AMERICA:

District Court of United States for the Eastern District of Pennsylvania.

UNITED STATES OF AMERICA
vs.
HERMAN KECK. } No. 20.

Motion of defendant, Herman Keck, to quash indictment and each count therein.

Now comes the defendant, Herman Keck, by his counsel, and moves the court to quash the first count in the indictment herein for the following reasons, to wit:

First. Said count does not set forth facts sufficient to con-
9 stitute a crime against the United States of America or the laws and statutes of the United States of America.

Second. The said counts and the matters therein alleged do not constitute a crime against the United States of America or the laws and statutes of the United States of America.

Third. Said count does not specify and set forth how or in what respect or particular the alleged importation and bringing in were contrary to law.

Fourth. Said count does not specify and set forth how or in what respect or particular the alleged assisting in importation and bringing in were contrary to law.

Fifth. Said count is defective in this, to wit, that it is repugnant and inconsistent in this, to wit, it charges both the doing of certain acts and assisting therein.

Sixth. Said count is defective in this, to wit, it charges two counts in one count, to wit, knowingly, wilfully, and unlawfully importing and bringing into the United States as one crime, and assisting and importing and bringing into the United States as a second crime.

10 Seventh. Said count is defective in this, to wit, that it does not charge that the act of assisting was done fraudulently or knowingly.

Eighth. Said count is defective in this, to wit, it does not specify and set forth and allege whom it was this defendant is charged with having assisted.

The defendant, Herman Keck, by his counsel, also moves the court to quash the second count in the indictment herein for the following reasons, to wit:

First. Said count does not set forth facts sufficient to constitute a crime against the United States of America or the laws and statutes of the United States of America.

Second. Said counts and the matters therein alleged do not con-

stitute a crime against the United States of America or the laws and statutes of the United States of America.

Third. Said count is defective in this, to wit, it charges two crimes in one count, to wit, knowingly, wilfully, and unlawfully, and with intent to defraud the revenues of the United States, smuggle as one crime, and clandestinely introducing as another.

11 Fourth. Said count is defective in this, to wit, that it does not allege that the act of clandestinely introducing was done knowingly and wilfully.

The defendant, Herman Keck, by his counsel, also moves the court to quash the third count in the indictment herein for the following reasons, to wit:

First. Said count does not set forth facts sufficient to constitute a crime against the United States of America or the laws and statutes of the United States of America.

Second. Said count and the matters therein alleged do not constitute a crime against the United States of America or the laws and statutes of the United States of America.

Third. Said count is defective in that it does not specify and set forth how or in what respect the alleged importation and bringing in were contrary to law.

Fourth. Said count is defective in this, to wit, that the manner in which the alleged importation and bringing in took place *are* not contrary to the laws and statutes of the United States of America.

12 Fifth. Said count is defective in this, to wit, that the alleged manner of the alleged importation and bringing in — the alternative, to wit, in the entry of the goods, wares, and merchandise and the mentioning of the goods, wares, and merchandise.

Sixth. Said count is defective in this, that it charges four ways and manners in which the alleged importation and bringing in were contrary to law, to wit: First, that due entry was not made; second, clandestine concealment; third, failure to particularize the contents of the box; fourth, a failure to mention said goods, wares, and merchandise.

Seventh. Said count is defective in this, to wit, it is indefinite and uncertain in this, to wit, it does not specify the name of the custom-house inspector.

Wherefore defendant, Herman Keck, by his counsel, prays the court that the indictment herein and each and all of the counts of the said indictment herein may be quashed.

A. H. BODE,
FRANCIS B. JAMES,
Counsel for Defendant, Herman Keck.

A. H. BODE,
JAMES & JAMES,
Attorneys.

13 And thereupon, on the said 26th day of May, A. D. 1896, before the said the Honorable William Butler, judge as aforesaid, the said motion to quash the indictment aforesaid so as aforesaid made on behalf the said Herman Keck, defendant, is overruled.

14 *Demurrer of the Defendant by His Counsel.*

Presented and filed May 26, 1896.

UNITED STATES OF AMERICA:

District Court of the United States for Eastern District of Pennsylvania.

UNITED STATES OF AMERICA
vs.
HERMAN KECK. } No. 20.

Demurrer of defendant, Herman Keck, to the indictment and each count therein.

Now comes the defendant, Herman Keck, in his own proper person, into court, and, having heard said indictment and the first count thereof read, says that the first count in said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that
15 he, the said Herman Keck, is not bound by the law of the land to answer the same; and this he is ready to verify. Wherefore, for want of sufficiency of the first count of said indictment in this behalf, the said Herman Keck prays judgment and that by the court he may be dismissed and discharged from the said premises in the said first count of said indictment specified.

And again now comes defendant, Herman Keck, in his own proper person, into court, and, having heard the said indictment and the second count thereof read, says that the said second count of said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that he, the said Herman Keck, is not bound by the law of the land to answer the same; and this he is ready to verify. Wherefore, for want of sufficiency of the second count of said indictment in this behalf, the said Herman Keck prays judgment and that by the court he may be dismissed and discharged from the said premises in the said second count of said indictment
16 specified.

And again now comes defendant, Herman Keck, in his own proper person, into court, and, having heard the said indictment and the third count thereof read, says that the said third count of said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that he, the said Herman Keck, is not bound by the law of the land to answer the same; and this he is ready to verify. Wherefore, for want of sufficiency of the third count of said indictment in this behalf the said Herman Keck prays judgment and that by the court

he may be dismissed and discharged from the said premises in the said third count of said indictment specified.

AUGUST H. BODE,
FRANCIS B. JAMES,
Counsel for Defendant, Herman Keck.

AUGUST H. BODE,
JAMES & JAMES,
Attorneys.

17 And thereupon, on the said 26th day of May, A. D. 1896, before the said the Honorable William Butler as aforesaid, the said demurrer so as aforesaid presented on behalf of the said Herman Keck, defendant, is overruled.

18 *Application of Defendant for a Dedimus Potestatem, with Affidavit in Support Thereof.*

Presented and filed May 26, 1896.

UNITED STATES OF AMERICA
vs.
HERMAN KECK. } May Sessions, 1896. No. 20.

Now comes the defendant, Herman Keck, and moves the court for a *dedimus potestatem* to take depositions at Amsterdam, Holland, and Antwerp, Belgium, in pursuance of section 866 of the Revised Statutes of the United States, and the testimony to be taken is necessary to his defence and is necessary in order to prevent a failure of justice.

AUGUST H. BODE,
FRANCIS B. JAMES,
Counsel for Herman Keck.

AUGUST H. BODE,
JAMES & JAMES,
Attorneys.

19 UNITED STATES OF AMERICA:

District Court of United States for the Eastern District of Pennsylvania.

UNITED STATES OF AMERICA
vs.
HERMAN KECK. } May Sess., 1896. No. 20.

Affidavit of Herman Keck in Support of Application for Dedimus Potestatem.

STATE OF PENNSYLVANIA,
County and City of Philadelphia, Eastern District of Pennsylvania, } *ss:*

Herman Keck, being first duly sworn, on oath deposes and states

that he is not guilty as charged in the indictment, and has
20 duly entered his plea of not guilty, and that in order to obtain a fair and impartial trial it will be necessary for him to have issued a *dedimus potestatem* to take and procure the evidence of one Franz Von Hemmelrich and E. Michaux, residents of Antwerp, Belgium, and Moritz Sachs, a resident of Antwerp, Belgium, and Emanuel Sachs, a resident of Amsterdam, Holland, and Henry Hartog, a resident of Amsterdam, Holland, and sundry other persons whose names and residences this affiant cannot at present give, but who live in the neighborhood of Antwerp, Belgium, and Amsterdam, Holland. Affiant states that he expects to procure evidence in support of his defence by the aid of the said *dedimus potestatem* in substance as follows, to wit:

That Captain Loesewitz is in the business and employ of a line of steamers plying between Liverpool and Philadelphia, and is the same person charged with smuggling and clandestinely introducing and importing, contrary to law, a certain lot of cut diamonds on the steamer Rhynland, in connection with which this affiant is
21 charged at a date when affiant was hundreds of miles away at sea on the steamer Aller. Affiant expects to prove by witnesses that the said Captain Loesewitz was in the habit and practice to smuggle and regularly to make charges for his service to those who employed him to smuggle cut diamonds and other articles, and that on the occasion of the trip of the steamer Rhynland to America from Liverpool, the Rhynland arriving in Philadelphia on or about the 11th day of February last, the said Captain Loesewitz had been acting as agent for certain parties in New York and New Jersey to smuggle for them certain quantities of cut diamonds and jewelry; that the said Captain Loesewitz had agreed to perform the said services in consideration of a compensation to be paid him; that the said Captain Loesewitz had several packages of smuggled cut diamonds on board said ship, with the intention of landing them, the exact nature of which and the ownership thereof this affiant does not know, but believes he can fully establish that by depositions, which he seeks to take under the said *dedimus potestatem;* that the said Captain Loesewitz was the bearer of a number
22 of cut diamonds, and that said Captain Loesewitz carried on his previous trip to Europe from Philadelphia a written order from a New Jersey merchant for the purchase of diamonds, and which order is still in existence in Antwerp, Belgium, and which order this affiant believes he will be able to produce in evidence, and that the same is on the business card of said New Jersey merchant and in the handwriting of said Captain Loesewitz; that said diamonds are the diamonds described in the indictment, and that it will aid in the establishing of the innocence of this affiant to prove it; affiant further states that he expects to prove and establish the exact character and the nature of his business on the occasion of his visit to Amsterdam, Holland, and Antwerp, Belgium, and Hanau, Germany, in January, 1896, the character of the goods he purchased on that visit, and that the same were rough diamonds, pearls, and cut diamonds, and corresponded in amount and value with those

afterwards received through the United States custom-house at Cincinnati, Ohio, and New York city by the Herman Keck Mfg. Co. and the Coetermans Henricks Diamond Cut-
23 ting Company, excepting therefrom 39 and $\frac{1}{16}$ carats of goods resold in Europe, and that full duty was paid thereon to the Government of the United States. Affiant further expects to establish as bearing upon his defence in this case the full details as to the amount and value of said purchases of uncut and cut diamonds during the period of the year last past, so that the same can be identified with the invoices of uncut diamonds and cut diamonds received by said companies and upon which they duly paid duty to the Government of the United States at New York city and Cincinnati, Ohio. Affiant cannot now give the names of any other than the within-named witnesses, but fully expects to establish by other witnesses that on the occasion of the trip of the Rhynland, landing in Philadelphia on the 11th of February last, the said Captain Loesewitz was the agent for pay to bring valuable dutiable goods to be smuggled into America, and that the object and purpose of the delivery of said valuable and dutiable goods to the said Captain Loesewitz was known to a number of persons in said Antwerp, as can be shown by other testimony. Affiant further
24 states that the income of said Captain Loesewitz is but nine hundred dollars ($900.00) per year, and for a number of years while being so employed as captain of said vessel the average expenses of said captain have greatly exceeded his income, and compensations paid said captain for bringing such goods into this country affiant believes to have realized the said Captain Loesewitz a moderate fortune. Affiant further says that the said Moritz Sachs was the broker for the Herman Keck Manufacturing Company since the said The Herman Keck Manufacturing Company began importing diamonds direct from Europe about the year 1886 or 1887; that the said Sachs acted as broker from 1886 or 1887 to about May, 1895, when the affiant became one of the organizers of the Coetermans Henrichs Keck Diamond Cutting Company; that after said time said Herman Keck Manufacturing Company ceased to import cut diamonds less than about $\frac{1}{16}$ carat each in weight which could not be cut by the Coetermans Henrichs Keck Diamond Cutting Company. Affiant further states that after the incorporation of said company all im-
25 portations were made by the said companies of rough diamonds except two importations of cut diamonds on which duties were duly paid to the Government of the United States. Affiant further states that said Moritz Sachs, as broker, and Henry Hartog, as book-keeper, duly invoiced said goods purchased through their office and had them certified and forwarded in bond regularly in the due course of importing, except one purchase made about March 1st, 1895, duly invoiced through the Antwerp consulate of about that date, and another purchase February 5th, 1896, a part of which was shipped and regularly invoiced through the Antwerp consulate, as is shown in invoice of February 21st, 1896, upon which said purchases duties were paid at the custom-house at Cincinnati,

except on said 39 and $\frac{1}{16}$ carats resold in Europe. Affiant further expects to show that the amounts of the purchases sent from Europe tally exactly with the amounts he purchased there and received in the United States and on which duty was paid. Affiant further expects to prove that after the arrest of said Captain Loesewitz said
26 Captain Loesewitz returned to Europe, and while in Europe stated that the authorities in America and the New York competitors of affiant who were instigators of said prosecution said that they did not care to punish him, but that they were after Mr. Keck (meaning affiant) and Mr. Coetermans, and that they intended that he (said Captain Loesewitz) should go free.

Affiant further states that before Captain Loesewitz went into the service of the Red Star line said Captain Loesewitz was in the employ of the Cockerills steamship line and commanded a steamer of said company plying between Antwerp, Belgium, and Lisbon, Portugal; that about the year 1881 the custom officials of Portugal condemned the steamer of which he had command for smuggling 500 pounds of tobacco, which tobacco was found concealed in or about said Captain Loesewitz's cabin, and was compelled to pay 4,000 francs penalty, which money was furnished by the steamship's company in order to release the ship, and in order to escape conviction said captain procured said money to be paid; said captain, as affiant believes, left the country in order to escape an actual prosecution.

27 Afterwards the company filed a suit against the captain to recover the penalty, but, as he had no means, the company afterwards dismissed the suit. Affiant further states that this information as to said Captain Loesewitz's smuggling of said tobacco and the proceedings had thereon was only conveyed to affiant on the 15th day of May, 1896—too late for him to get certified copies of said proceedings. Affiant further states that he has been looking up the record of said Captain Loesewitz and says that if given an opportunity he believes he will fully establish that said Captain Loesewitz is a common and notorious smuggler and worthy of no credence and belief. His reputation for truth and veracity is bad; and further affiant saith not.

HERMAN KECK.

Sworn to before me and subscribed in my presence this 26th day of May, A. D. 1896, in open court.

W. W. CRAIG,
Dep'y Cl'k.

28 (*Answer on Behalf of the United States to the Application for a Dedimus Potestatem.*)

(Presented and Filed May 27th, 1896.)

UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of Pennsylvania, May Term, 1896.

UNITED STATES } *vs.* } No. 20.
HERMAN KECK. }

Answer of the United States to the petition for a *dedimus potestatem* of Herman Keck, defendant in the said case.

The United States, by James M. Beck, United States attorney, hereby makes answer to the application of Herman Keck for a *dedimus potestatem* in the above case.

The United States, by its attorney, says:

29 1. That the laws of the United States do not permit the issuance of a *dedimus potestatem* in a criminal case, and that the application should therefore be denied.

2. That the said application was made too late, in that it was not presented until the defendant was called to plead and the case was ready for trial. The United States suggests that if a *dedimus potestatem* is permissible in a criminal case that it, as any process to compel the attendance of witnesses or to procure their testimony, should have been issued before the case was ready for trial, so that the said trial should not be unduly delayed.

3. The facts set forth in the within affidavit are an attempt to discredit a witness for the Government, namely, Captain Loesewitz, whose name is on the back of the bill of indictment as such witness. The United States suggests that while it is in the power of the defendant to question the credibility of the said witness by asking him questions that if admitted would show his lack of credibility, yet that the defendant is bound by such answers and cannot

30 convert the trial of this case against Herman Keck into the trial of Captain Loesiwitz for alleged offenses committed at other times and places.

4. The United States further suggests that the application for a *dedimus*, if permissible in a criminal case, has not been made in this instance conformably to common usage, in that a previous written notice of the motion and rule for the *dedimus* was not served upon the plaintiff.

5. The United States further suggests that the said application, even if permissible in a criminal proceeding, has not been properly made, in that the interrogatories which it is proposed to ask the witnesses named in such application have not been filed in court or notice thereof served upon the district attorney.

6. The United States further suggests that the said Herman Keck was arrested on the 15th day of February, 1896, and was held

in bail to await the action of the grand jury on the 18th day of February, 1896; that the said Herman Keck has sufficient means to procure the attendance of the witnesses whose deposition
31 he desires to take at this court, and that there was ample time for him to procure such attendance.

The United States suggests, therefore, that in the absence of any evidence or suggestion that the said defendant is without means to procure the attendance of these witnesses at this court, or that the said witnesses have refused to attend, this application should be denied.

7. The United States further suggests that the issuance of this commission, if it be permissible in a criminal case, rests in the sound discretion of the court, and that to grant the application which is made and filed in the court when a case is called for trial would be to delay justice.

Wherefore the United States prays that the application for a *dedimus potestatem* be denied.

JAMES M. BECK,
U. S. Att'y.

John C. Gallen, being duly sworn according to law, deposes and says that he is a special agent of the Treasury Department; that he is credibly informed and believes that Herman Keck is a
32 diamond merchant of large financial means in Cincinnati, and that it was possible for him to procure the attendance of witnesses at this court whose deposition he now desires to take.

JOHN C. GALLEN.

Sworn and subscribed before me this 27th day of May, A. D. 1896, in open court.

W. W. CRAIG,
Dep'y Cl'k.

33 (*Refusal by the Court of the Application for a Dedimus Potestatem.*)

(Entered and filed May 27, 1896.)

In the District Court of the United States for the Eastern District of Pennsylvania.

THE UNITED STATES *vs.* HERMAN KECK. } *Per Curiam.*

The application is refused on two grounds:

First. That the statute relied upon is not applicable to the criminal court nor to trials of causes therein.

Second. That if it was, the circumstances shown do not call for its application in this case at this time; that it does not appear that the presence of the witnesses could not have been procured by proper effort, and that if it did appear, it should be held
34 that the application comes too late; that it might have been made months ago and all delay in consequence of granting it avoided.

Whereupon counsel for defendant ask to have an exception noted; to which the court said: "An exception should be noted for what it is worth, but that in allowing it the court must not be understood as believing that this ruling is subject to review; that it does not so believe."

35 (*Pleas, Calling of Jury, and Verdict.*)

And thereupon he, the said Herman Keck, concerning the premises in the said indictment above specified and charged on him as above, being asked in what manner he would be acquitted thereof, says that he is not guilty thereof, and hereupon, for good or ill, he puts himself upon the country, and James M. Beck, Esq., attorney of the United States of America for the eastern district of Pennsylvania in this behalf, does the like.

And thereupon a jury, being called, come, to wit, W. Scott Hausman, John D. Nuttall, Edward N. Weyant, Nathan A. Confer, John A. Dever, Nicholas J. Drew, Alfred C. Grubb, Theo. H. Cowderman, John G. Devine, Wm. H. Haines, Elias J. Steiner, Jesse Bollinger, who, being chosen, tried, sworn, and affirmed to speak the truth of and upon the premises in the indictment aforesaid above specified, do say upon their oaths and affirmations that the said Herman Keck is guilty of the premises in the indictment aforesaid above specified in manner & form as he stands indicted.

36 (*Motions for a New Trial and in Arrest of Judgment and Reasons in Support thereof, Presented and Filed June 2nd, 1896.*

In the District Court of the United States for the Eastern District of Pennsylvania.

UNITED STATES *vs.* HERMAN KECK. } No. 20. May Sess., 1896.

And now, to wit, June 2nd, 1896, the defendant, by Francis B. James and A. S. L. Shields, his attorneys, move the court for a rule to show cause why a new trial should not be granted in above cause and arrest of judgment and assigns the following reasons in support thereof:

First. Because the verdict is against the law.

Second. Because the verdict is against the evidence and the weight of the evidence.

37 Third. Because the learned judge erred in sustaining the objection to and overruling the following question asked by defendant's counsel on cross-examination of the witness first produced by the Government, Captain Frank Loesewitz:

Q. Wasn't she (the Concha) seized for having on board smuggled goods?

Weren't smuggled goods found right next to your cabin?

Fourth. Because the learned judge erred in overruling the objection made by the defendant's counsel to the following question asked

by the district attorney of the Government witness John C. Gallen on direct examination:

Q. Did the captain give you a description of the man who gave the diamonds to him?

Fifth. Because the learned judge erred in overruling the objection made by the defendant's counsel to the following questions asked by the district attorney of the Government witness John C. Gallen on direct examination:

Q. I want to ask you whether it was possible for him (Keck) to have seen that there was no address on that package at the time.

38 (Objected to. Objection overruled.)

Q. Was the package held by you at that time so that Keck could see it?

Sixth. The learned judge erred in sustaining the objection to the offer of defendant on the examination of Constant Van Reeth, a witness for defendant, as follows:

Mr. SHIELDS: I offer to prove that at least one year and during a period of one year prior — the 27th day of January, 1896, the name of F. Van Reeth frequently appeared in the public prints of Antwerp referred to by Captain Loesewitz in his testimony, and that it was well known through the public prints and by knowledge that the people of Antwerp had that Mr. F. Van Reeth went to Cincinnati to engage in the diamond business.

Seventh. The learned judge erred in sustaining the objections to the following question of the defendant's counsel on the direct examination of Franz Van Reeth:

Q. What do you do with the rough?

(Objected to.)

Mr. SHIELDS: My purpose is to show that they deal wholly in rough diamonds.

39 That they cannot make any use of the cut diamonds in their business, and to follow that up by the people who handle their goods and the people who have seen them; that they never have any of this kind of material in their place at all, so as to show there was no motive on the part of these gentlemen to smuggle this stuff in.

(Objected to. Objection sustained.)

Eighth. The learned judge erred in refusing to affirm the defendant's first point, viz:

No. 1. The jury are instructed that there is insufficient evidence introduced in this case to make out the charges against the defendant, Herman Keck, and that they are therefore instructed to return a verdict of not guilty on both bills of indictment.

Ninth. The learned judge erred in refusing to affirm the defendant's second point, viz:

No. 2. The jury are instructed that there is insufficient evidence to make out a case against the defendant, Herman Keck, upon the first count of each bill of indictment, and they are therefore in-

structed to return a verdict of not guilty as to the first count
40 of each indictment.

Tenth. The learned judge erred in refusing to affirm the defendant's third point, viz:

No. 3. The jury are instructed that there is insufficient evidence to make out a case against the defendant, Herman Keck, upon the third count of each bill of indictment, and they are therefore instructed to return a verdict of not guilty as to the third count of both bills of indictment.

Eleventh. The learned court erred in refusing to affirm the defendant's fourth point, viz:

No. 4. The jury are instructed that there is insufficient evidence to make out a case against the defendant, Herman Keck, upon the second count of each bill of indictment, and they are therefore instructed to return a verdict of not guilty as to the second counts of both bills of indictment.

Twelfth. The learned judge erred in refusing to affirm the defendant's fifth point, viz:

No. 5. The jury are instructed that the defendant, Herman Keck, is charged with smuggling and clandestinely introducing
41 into the United States the diamonds mentioned in the indictment. They are further instructed that although they believe from the evidence there was an intention to smuggle or clandestinely introduce into the United States the diamonds mentioned in the indictment, and that Captain Loesewitz received said diamonds with the intention of not invoicing the same or putting the same on his manifest and delivering same in America without paying duty thereon, and put the same in his state-room on the steamer Rhyneland, where they remained until said Captain Loesewitz was called upon to deliver same to Revenue Officer Gallen, and that when delivered to Revenue Officer Gallen said Loesewitz knew said Gallen to be a revenue officer, then and in that case there is merely an unexecuted intention to smuggle or clandestinely introduce and would not constitute the crime of smuggling or clandestinely introducing or attempting to bring in, and as to the crime so charged your verdict must be not guilty.

Thirteenth. The learned judge erred in refusing to affirm the defendant's sixth point, viz:

42 The jury are instructed that as the first count in each bill of indictment insufficiently states any crime against the laws of the United States said first count in each bill of indictment is to be entirely ignored by them and not considered.

Fourteenth. The learned judge erred in refusing to affirm the defendant's eight point, viz:

No. 8. The jury are instructed that the second count in each bill of indictment charges that the defendant, Herman Keck, smuggled and clandestinely introduced into the United States the diamonds mentioned in the indictment, but does not charge him with aiding and abetting therein, and, as to the section of the statute upon which this count is based, makes a distinction between the doing of an act and aiding and abetting therein; therefore your verdict

must be not guilty upon the second count of both bills of indictment.

Fifteenth. The learned judge erred in not affirming the defendant's tenth point unqualifiedly and in qualifying his answer to said point, viz:

No. 10. The jury are instructed that they will not be justified in finding a verdict of guilty, although there may be a pre-
43 ponderance of evidence of guilt; a preponderance of evidence of guilt will not be sufficient in warranting the jury in finding a verdict of guilty, but the jury must be convinced beyond reasonable doubt from the evidence that the defendant, Herman Keck, is guilty as charged. Before the jury can find the defendant guilty the evidence must be consistent with every hypothesis of guilt and inconsistent with every hypothesis of innocence.

Answer. The court affirms the tenth point generally, but the meaning ascribed to it by the court is that the jury shall be fully convinced from a careful examination of all the testimony heard that the defendant is guilty of the smuggling charged, as testified to by Captain Loesewitz, and that if it is so convinced beyond room for reasonable doubt it will be justified in finding a verdict of guilty generally and should do so.

If it is not convinced, the defendant is entitled to an acquittal and should be acquitted.

Sixteenth. The learned judge erred in charging the jury as follows:

"It is sufficient to say in this respect that if the statements
44 made here under oath by Captain Loesewitz respecting his receipt of the package of diamonds in Antwerp and bring-them here are true the defendant is guilty of the offence charged."

Seventeenth. Because the learned judge erred in refusing to grant the prayer of the defendant's petition for a *dedimus potestatem.*

A. S. L. SHIELDS,
FRANCIS B. JAMES,
Def't's Att'ys.

45 (*Refusal of New Trial, &c., and Sentence Imposed by the Court.*)

And thereupon, on the fourth day of June, A. D. 1896, arguments having been heard and due consideration having been given to the subject, the court is of opinion that the verdict aforesaid ought to stand and that a new trial ought not to be granted, but that judgment ought to — entered and given on said verdict. Whereupon the motion for a new trial and in arrest of judgment are overruled, reasons in support of same dismissed, and a new trial is refused.

And thereupon, on the ninth day of June, A. D. 1896, all and singular the premises being seen and by the court here fully understood, it is considered and adjudged that the defendant, Herman Keck, pay to the United States a fine of two hundred dollars; that

he be imprisoned and confined in the Eastern penitentiary of the Commonwealth of Pennsylvania for the term of one year; that he pay the costs of prosecution and stand committed until judgment be fully complied with, and that he be subject in all respects to the same discipline and treatment as convicts sentenced by the courts of the said Commonwealth.

46 (*Bill of Exceptions. Filed May 9th*, 1896.)

UNITED STATES OF AMERICA:

United States District Court, Eastern District of Penna.

UNITED STATES OF AMERICA
vs.
HERMAN KECK. } Indictment No. 20. May Sessions, 1896.

Bill of exceptions.

Be it remembered that in the said May sessions, 1896, came the said United States into the said court and impleaded the said defendant, Herman Keck, in a certain indictment in which the said defendant, Herman Keck, was charged with an offence under sections 2865, 3082, and 2802 of the Revised Statutes of the United States of America, and upon the 20th day of May, 1896, at said sessions of said court, said defendant, Herman Keck, presented his applications to said court, asking and praying the court that a *dedimus potestatem* issue to take testimony and depositions at Amsterdam and Antwerp, Belgium, in pursuance of section 866 of the Revised Statutes of the United States, and the testimony
47 therein to be taken was necessary to his defence and necessary in order to prevent a failure of justice; which said application was duly marked filed on the docket of said court May 26th, 1896, and which said application is in words and figures as follows, to wit:

UNITED STATES OF AMERICA:

District Court of United States for Eastern District of Penna.

UNITED STATES OF AMERICA
vs.
HERMAN KECK.

Application for Defendant, Herman Keck, for Dedimus Potestatem.

Now comes the defendant, Herman Keck, and moves the court for a *dedimus potestatem* to take depositions at Amsterdam, Holland, and Antwerp, Belgium, in pursuance of section 866 of the Revised Statutes of the United States, and the testimony to be taken is necessary to his defence and is necessary to prevent a failure of justice.

A. H. BODE,
FRANCIS B. JAMES,
Counsel for Herman Keck.

And then and thereupon defendant, Herman Keck, at the time and place of making said application, duly presented to the court thereof the affidavit of the defendant, Herman Keck, which is in words and figures as follows, to wit:

48 UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of Pennsylvania.

UNITED STATES OF AMERICA
vs.
HERMAN KECK. } No. 20. May Sess., 1896.

Affidavit of Herman Keck in Support of Application for Dedimus Potestatem.

STATE OF PENNSYLVANIA,
County and City of Philadelphia, Eastern District of Pennsylvania, } *ss:*

Herman Keck, being first duly sworn, on oath deposes and states that he is not guilty as charged in the indictment and has duly entered his plea as not guilty, and that in order to obtain a fair and impartial trial it will be necessary for him to have issued a *dedimus potestatem* to take and procure the evidence of one Franz Von Hemmelrich and E. Michauz, residents of Antwerp, Belgium, and Moritz Sachs, a resident of Antwerp, Belgium, and Emanuel Sachs, a resident of Amsterdam, Holland, and Henry Hartog, a resident of Amsterdam, Holland, and sundry other persons whose names and residences this affiant cannot at present give, but who live in the neighborhood of Antwerp, Belgium, and Amsterdam, Holland. Affiant states that he expects to procure evidence
49 in support of his defence by the aid of the said *dedimus potestatem*, in substance as follows, to wit:

That Captain Loesewitz is in the business and employ of a line of steamers plying between Liverpool and Philadelphia, and is the same person charged with smuggling and clandestinely introducing and importing, contrary to law, a certain lot of cut diamonds on the steamer "Rhynland," in connection with which this affiant is charged at a date when affiant was hundreds of miles away at sea on the steamer "Aller." Affiant expects to prove by witnesses that the said Captain Loesewitz was in the habit and practice to smuggle and regularly to make charges for his services to those who employed him to smuggle cut diamonds and other articles, and that on the occasion of the trip of the steamer "Rhynland" to America from Liverpool, the "Rhynland" arriving at Philadelphia on or about the 11th day of February last, the said Captain Loesewitz had been acting as agent for certain parties in New York and New Jersey to smuggle for them certain quantities of cut diamonds and jewelry; that the said Captain Loesewitz had agreed to perform the said services in consideration of a compensation to be paid him; that the said Captain Loesewitz had several packages of smuggled

cut diamonds on board said ship with the intention of landing them, the *the* exact nature of which and the ownership thereof this affiant does not know, but believes he can fully establish that by depositions which he seeks to take under the said *dedimus potestatem;* that the said Captain Loesewitz was the bearer of a number of cut diamonds, and that the said Captain Loesewitz carried on his
50 previous trip to Europe from Philadelphia a written order from a new Jersey merchant for the purchase of diamonds, and which order is still in existence in Antwerp, Belgium, and which order this affiant believes he will be able to produce in evidence, and that the same is on the business card of said New Jersey merchant and in the handwriting of said Captain Loesewitz; that the said diamonds are the diamonds described in the indictment, and that it will aid in the establishment of the innocence of this affiant to prove it. Affiant further states that he expects to prove and establish the exact character and the nature of his business on the occasion of his visit to Amsterdam, Holland, and Antwerp, Belgium, and Hanau, Germany, in January, 1896, the character of the goods he purchased on that visit, and that the same were rough diamonds, pearls, and cut diamonds, and corresponded in amount and value with those afterwards received through the United States custom-house at Cincinnati, Ohio, and New York city by the Herman Keck Mfg. Co. and the Coetermans Henricks Heck Diamond Cutting Company, excepting therefrom 39 and $\frac{1}{16}$ carats of goods resold in Europe, and that full duty was paid thereon to the Government of the United States. Affiant further expects to establish as bearing upon his defence in this case the full details as to the amount and value of said purchases of uncut diamonds during the period of the year last past, so that the same can be identified, with the invoices of uncut diamonds and cut diamonds received by said companies and upon which they duly paid duty to the Government of the United
51 States at New York city and Cincinnati, Ohio. Affiant cannot now give the names of any other than the within-named witnesses, but fully expects to establish by other witnesses that on the occasion of the trip of the "Rhynland," landing in Philadelphia on the 11th of February last, the said Captain Loesewitz was the agent for pay to bring valuable dutiable goods to be smuggled into America, and that the object and purpose of the delivery of said valuable and dutiable goods to the said Captain Loesewitz was known to a number of persons in said Antwerp, as can be shown by other testimony.

Affiant further states that the income of said Captain Loesewitz is but nine hundred dollars ($900.00) per year, and for a number of years, while being so employed as captain of said vessel, the average expenses of said captain have greatly exceeded his income, and compensation paid said captain for bringing such goods into this country affiant believes to have realized the said Captain Loesewitz a moderate fortune.

Affiant further states that the said Moritz Sachs was the broker for the Herman Keck Manufacturing Company since the said The

Herman Keck Manufacturing Company began importing diamonds direct from Europe, about the year 1886 to 1887; that the said Sachs acted as broker from 1886 or 1887 to about May, 1895, when the affiant became one of the organizers of the Coetermans Henrichs Keck Diamond Cutting Company; that after said time Herman Keck Manufacturing Company ceased to import cut diamonds
52 less than about $\frac{1}{16}$ carat each in weight, which could not be cut by the Coetermans Henrichs Keck Diamond Cutting Company. Affiant further states that after the incorporation of said company all importations were made by the said companies of rough diamonds, except two importations of cut diamonds, on which duties were duly paid to the Government of the United States. Affiant further states that said Moritz Sachs, as broker, and Henry Hartog, as book-keeper, duly invoiced said goods purchased through their office, and had them certified and forwarded in bond regularly in the due course of importing, except one purchase made about March 1st, 1895, duly invoiced through the Antwerp consulate of about that date, and another purchase, February 5th, 1896, a part of which was shipped and regularly invoiced through the Antwerp consulate, as is shown in invoice of February 21st, 1896 upon which said purchases duties were paid at the custom-house at Cincinnati, except on said 39 and $\frac{7}{16}$ carats resold in Europe. Affiant further expects to show that the amounts of the purchases sent from Europe tally exactly with the amounts he purchased there and received in the United States and on which duty was paid. Affiant further expects to prove that after the arrest of said Captain Loesewitz, said Captain Loesewitz returned to Europe, and while in Europe stated that the authorities in America and the New York competitors of affiant, who were instigators of said prosecution, said that they did not care to punish him, but that they were after Mr. Keck (meaning affiant) and Mr. Coetermans, and that they intended that he (said Captain Loesewitz) should go free.

53 Affiant further states that before Captain Loesewitz went into the service of the Red Star line said Captain Loesewitz was in the employ of the Cockerills steamship line, and commanded a steamer of said company plying between Antwerp, Belgium, and Lisbon, Portugal; that about the year 1881 the custom officials of Portugal condemned the steamer of which he had command for smuggling 500 pounds of tobacco, which tobacco was found concealed in or about said Captain Loesewitz's cabin, and was compelled to pay 4,000 francs penalty, which money was furnished by the steamship company in order to release the ship, and in order to escape conviction said captain procured said money to be paid; said captain, as affiant believes, left the company in order to escape an actual prosecution. Afterwards the company filed a suit against the captain to recover the penalty; but as he had then no means, the company afterwards dismissed the suit. Affiant further states that this information as to said Captain Loesewitz's smuggling of said tobacco and the proceedings had thereon was only conveyed to affiant on the 15th day of May, 1896, too late for him to get certified copies of said proceedings Affiant further states that he has

been looking up the record of said Captain Loesewitz, and says that if given an opportunity he believes he will fully establish that said Captain Loesewitz is a common and notorious smuggler and worthy of no credence and belief; his reputation for truth and veracity is bad, and further affiant saith not.

HERMAN KECK.

Sworn to before me and subscribed in my presence this 26th day of May, A. D. 1896, in open court.

W. W. CRAIG, *Dep'y Cl'k.*

54 And thereupon the court took under consideration said application and said affidavit in support thereof, and on consideration thereof overruled said application and denied said application; to which ruling of the court defendant, Herman Keck, then and there excepted; which exception was then and there duly allowed by the court.

Then and thereupon Hon. James M. Beck, United States district attorney for said district, asked time in which to file an answer to the application of Herman Keck for a *dedimus potestatem*, which application was granted, and said Hon. James M. Beck given until 10 o'clock a. m. of May 27th, 1896, — filed the same; and thereafter, to wit, at said ten o'clock a. m. on said 27th day of May, 1896, the said Hon. James M. Beck filed the said answer, which is in words and figures as follows, to wit:

UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of Pennsylvania.

UNITED STATES *vs.* HERMAN KECK. } No. 20. May Term, 1896.

Answer of the United States to the Petition for a Dedimus Potestatem of Herman Keck, Defendant in the said Case.

The United States, by James M. Beck, United States attorney, hereby makes answer to the application of Herman Keck
55 for a *dedimus potestatem* in the above case.

The United States, by its attorney, says:

1. That the laws of the United States do not permit the issuance of a *dedimus potestatem* in a criminal case, and that the application should therefore be denied.

2. That the said application was made too late, in that it was not presented until the defendant was called to plead and the case was ready for trial. The United States suggests that if a *dedimus potestatem* is permissible in a criminal case, that it, as any process to compel the attendance of witnesses or to procure their testimony, should have been issued before the case was ready for trial, so that the said trial should not be unduly delayed.

3. The facts set forth in the within affidavit are an attempt to

discredit a witness for the Government, namely, Captain Loesewitz, whose name is on the back of the bill of indictment as such witness. The United States suggests that while it is in the power of the defendant to question the credibility of the said witness by asking him questions that, if admitted, would show his lack of credibility, yet that the defendant is bound by such answers and cannot convert the trial of this case against Herman Keck into the trial of Captain Loesewitz for alleged offences committed at other times and places.

4. The United States further suggests that the application for a dedimus, if permissible in a criminal case, has not been made in this instance conformably to common usage, in that a previous written notice of the motion and rule for the dedimus was not served
56 upon the plaintiff.

5. The United States further suggests that the said application, even if permissible in a criminal proceeding, has not been properly made, in that the interrogatories which it is proposed to ask the witnesses named in such application have not been filed in court or notice thereof served upon the district attorney.

6. The United States further suggests that the said Herman Keck was arrested on the fifteenth day of February, 1896, and was held in bail to await the action of the grand jury on the fifteenth day of February, 1896; that the said Herman Keck has sufficient means to procure the attendance of the witnesses whose depositions he desires to take at this court, and that there was ample time for him to procure such attendance. The United States suggests, therefore, that in the absence of any evidence or suggestion that the said defendant is without means to procure the attendance of these witnesses at this court, or that the said witnesses have refused to attend, this application should be denied.

7. The United States further suggests that the issuance of this commission, if it be permissible in a criminal case, rests in the sound discretion of the court, and that to grant the application which is made and filed in the court when a case is called for trial would be to delay justice.

Wherefore the United States prays that the application for a *dedimus potestatem* be denied.

JAMES M. BECK,
U. S. Attorney.

57 John C. Gallen, being duly sworn according to law, deposes and says that he is a special agent of the Treasury Department; that he is credibly informed and believes that Herman Keck is a diamond merchant of large financial means in Cincinnati, and that it was possible for him to procure the attendance of witnesses at this court, whose deposition he now desires to take.

JOHN C. GALLEN.

Sworn and subscribed before me this 27th day of May, A. D. 1896.

(Signed) W. W. CRAIG,
Dep'y Cl'k.

And this was all of the evidence offered for and against said application, and then and thereupon the court took under consideration said application and said affidavit in support thereof and said answer of the plaintiff, and on consideration thereof ruled as follows, to wit:

The application referred to yesterday is refused on two grounds:

First. That the statute relied upon is not applicable to the criminal court nor to trials of causes therein.

Second. That if it was the circumstances shown do not call for its application in this case at this time; that it does not appear that the presence of the witnesses could not have been procured by proper effort, and that if — did not appear it should be held that the application comes too late; that it might have been made months ago and all delay in consequence of granting it avoided.

58 Whereupon counsel for defendant ask to have an exception noted; to which the court said: "An exception should be noted for what it is worth, but that in allowing it the court must not be understood as believing that this ruling is subject to review; that it does not so believe."

Be it further remembered that after the proceedings aforesaid, at the same session, to wit, May sessions in 1896, came the United States into the said court and impleaded the said defendant, Herman Keck, in the indictment aforesaid, and to which indictment the said defendant, Herman Keck, pleaded "not guilty," and thereupon issue was joined between them.

And afterward, to wit, at said May sessions of said court, held in the district aforesaid, before the Hon. William Butler, judge of the said court, on the said 27th day of May, 1896, the aforesaid issue between the said parties came to be tried by a jury for that purpose, duly impanelled, *prout* list of jurors, and came as well the said United States, by Hon. James M. Beck, United States district attorney, and Hon. Harry K. Newitt, ass't United States district attorney, and the defendant, Herman Keck, by his attorneys, A. S. L. Shields, August H. Bode, and Francis B. James, and the jurors of the jury aforesaid, being also called, came, and were then and there in due manner chosen and sworn or affirmed to try the said issue, and upon the said trial the witnesses for the United States were called and sworn and examined as follows, to wit:

59 FRANK LOESEWITZ, having been duly sworn, was examined as follows:

By Mr. BECK:

Q. Where do you reside?
A. Antwerp. I was born in Antwerp.
Q. Of what country are you a citizen?
A. I am a citizen of Belgium.
Q. What is your occupation?
A. Seafaring man—captain.

Q. Of what steamer?
A. The Rhynland, of the International Navigation Company.
Q. How long have you been captain of the Rhynland?
A. Since last year, in August.
Q. She plies between what ports?
A. Between Philadelphia and Liverpool.
Q. On last February, between what ports did she ply?
A. Between Philadelphia and Liverpool.
Q. Did you ever see the defendant, Herman Keck, before?
A. Never before I was in Antwerp.
Q. State in your own way the exact circumstances under which you first met the defendant, Herman Keck, and what took place.
A. On the 21st of January last, in the afternoon, I was in with a friend of mine, Von Hemmelrick.
Q. What was his full name?
A. Franz Von Hemmelrick.
Q. Where does he live?
A. In Antwerp.
Q. What is his business?
A. Jeweler.
60 Q. Is he a wholesale or a retail jeweler?
A. He has a store.
Q. Does he sell at wholesale or retail?
A. He sells jewelry; that's all I know.
Q. How long have you known him?
A. 25 or 26 years.
Q. You say you first met Herman Keck on the 27th of January, 1896, in company with Von Hemmelrick?
A. Yes, sir; in the afternoon I was in his house—that is, in Von Hemmelrick's house.
Q. What took place?
A. I was in Mr. Von Hemmelrick's house on the 27th, in the afternoon. He wasn't at home at that time. I had conversation with his lady—that is, with his wife.
Q. Were you there for any business purposes?
A. No, sir; I was just visiting him because he was a friend. Whenever I go to Antwerp I always go there.
Q. Was it a social call?
A. Yes, sir.
Q. State whether you had any idea when you went to his house that you were going to meet Herman Keck.
A. No, sir; I had never saw him and had never heard of him before then. Mr. Von Hemmelrick wasn't at home at that time. I stayed about a quarter or half an hour, talking with his wife. I was a mind to go out. At the moment I was going out Mr. Von Hemmelrick came in with Mr. Keck, and asked where I was going to. I said I was going home. He said, "You have time enough; come, let's have a glass of beer." We walked out of the house, and in the meantime he introduced me to Mr. Keck.
61 Q. How did he introduce you?

A. He said, "He's one of my friends—customers; we're going to take a glass of beer before you go."

Q. Did he mention the name?

A. Well, yes; but I didn't recollect it.

Q. He did mention the name?

A. I don't know that he did mention the name.

Q. He said, "This is my friend, a customer of mine"?

A. Yes, sir; "Let's go and have a glass of beer."

Q. Did he say where that friend came from?

A. No, sir.

Q. In what language did Von Hemmelrick speak to you?

A. He spoke in Flemish. We went to the Café Alsacienne, which is situated on the Place Vert, in Antwerp, and walked in and sat at a table, and each ordered a glass of beer and had a talk. At one time Mr. Von Hemmelrick went to his pocket and got a small package out and showed it to me. He says, "This package belongs to that gentleman here."

By the COURT:

Q. Was the defendant there at the time?

A. Yes, sir; he was there, sitting at the table.

By the DISTRICT ATTORNEY:

Q. Was that said in the hearing of Herman Keck?

A. Yes, sir; we sat close to one another.

Q. Was there anybody else present except you and Keck and Von Hemmelrick?

A. There were other people in the place, but none in our party.

Q. There was nobody else sitting at your table except those two gentlemen and yourself?

A. No, sir.

62 Q. Von Hemmelrick said, "This package belongs to my friend"?

A. Yes, sir; he said, "Will you oblige me to take that over to America? It belongs to him; it belongs to that gentleman; he's a a customer of mine: it doesn't contain any valuables."

Q. Did Keck say anything when that statement was made?

A. He said also that it did not contain any valuables.

Q. Did he deny that the package belonged to him when Von Hemmelrick said, "This package belongs to my friend"?

A. No, sir; seeing the package, I remarked that there was no address on it. I said, "Where shall I send it to?" I asked the stranger.

Q. You asked Mr. Keck?

A. Yes, sir; I asked him, "Where shall I send it to, sir?" After asking him that, he tore a piece of paper off a card laying on the table and put an address on it.

Q. Would you recognize that piece of paper again?

A. Oh, yes.

Q. Before handing you that paper, state, if you remember, what name was on it.

A. If I remember well, it was T. Van Reeth, 4th street, Cincinnati—21, I believe.

Q. Was that the number of the house?

A. No. 21 or 24; I am not sure about that.

Q. State your best recollection about it.

A. I think it was 21.

Q. I hand you a paper and ask you whether that is the paper that was handed to you by the defendant, Herman Keck?

A. Yes, sir; that is the paper.

Q. Do I understand you to say that he wrote that paper in your presence?

63 A. Yes, sir.

Q. From something that was lying on the table?

A. Yes, sir.

Q. Please look at the other side of that paper and tell me whether there is anything in the printing that confirms your recollection?

A. That represents a funeral card. That is the exact paper I had from Mr. Keck.

Q. Did you notice the print at the time on the other side?

A. No, sir.

Q. But you noticed it afterwards?

A. I only noticed it afterwards, because I put the package then in my pocket.

Q. Have you any doubt whatever that that is the paper?

A. There is no doubt about it that that is the paper.

Q. What else took place that day?

A. We only stayed in the café about a quarter of an hour, not longer. We walked out. We separated on the Place Vert.

Q. Was there anything else said at that time in regard to the package?

A. No, sir; nothing else.

Q. Was there anything said as to how you were to get it to Cincinnati?

A. Oh, yes; he told me afterwards to send it by Adams Express.

Q. Who told you afterwards?

A. Mr. Keck.

Q. What do you mean by afterwards? Was it after you separated?

A. After we came out of the café we separated on the Place Vert; then he told me.

Q. Before you separated?

64 A. Yes, sir; before we separated.

Q. State his exact words in regard to that, as near as you can recollect them.

A. His exact words were these—that he told me to send it by Adams Express.

Q. How did he come to make that remark?

A. Because I asked him the way to send it.

Q. Did he say who Van Reeth was?

A. No, sir; never.

Q. Did he at any time during that interview tell you what was in the package?

A. No, sir.

Q. But he did tell you there was nothing of value in it?

A. Yes, sir; that there was nothing of value. Mr. Van Hemmelrick said that also, both of them.

Q. Did they say the purpose that they had in sending that package to America?

A. No, sir.

Q. I hand you a package and ask you to look at it and tell me whether or not that is the package which was handed to you by Von Hemmelrick, with the statement that it belonged to the defendant, Herman Keck.

A. That is the package.

Q. Was it in the shape, with respect to the seals and binding, that you now see it?

A. It was in the same shape, only the paper got torn off. At that time the paper was right out and had those seals on and no writing on it.

Q. Did you ever see Herman Keck again before you sailed?

A. No, sir.

65 Q. When were you to sail?

A. I was only to Antwerp on a visit. My ship laid at Liverpool, and I left on the same night via Ostende and Dover for Liverpool. I arrived at Liverpool on Tuesday and sailed on Wednesday, the following day.

Q. Do you remember the date?

A. On the 29th, which was Wednesday.

Q. How long was that after you left Antwerp?

A. Two days after I left Antwerp.

Q. What day of the week was it that this interview took place in the Cafe Alsacienne?

A. Monday, the 27th of January.

Q. You sailed on the 29th?

A. Yes, sir.

Q. Did you see your friend Von Hemmelrick again before you sailed, after you separated in the Place Vert?

A. Yes, sir.

Q. Did you have any conversation with him about the package?

A. No, sir; I happened to see him when I left the station. I was with another friend.

Q. Was there anything said about this package?

A. No, sir; nothing.

Q. Did you break the seals of that package at any time?

A. No, sir.

Q. Did you know, until it was opened by the custom-house authorities, what was in that package?

A. No, sir; I hadn't the slightest idea what was in it.

Q. Was that package invoiced by you? Did you go before the United States consul and invoice it?

A. No, sir.

66 Q. Was it on your ship's manifest?
A. No, sir.
Q. (Manifest shown witness.) This is the ship's manifest, is it not?
A. Yes, sir.
A. As a matter of fact, you know it is not on there?
A. It is not on there, because I thought it didn't contain any valuables.
Q. What took place when you reached the port of Philadelphia?
A. When I reached the port of Philadelphia, after the passesgers were landed, two gentlemen entered my room and they said they had information from Antwerp that I had a package to a friend to send it to Cincinnati. I said right away, "Yes." I thought those gentlemen came for the package, and that they were sent by Mr. Keck, and, naturally, on my part, I asked them who they were. They said they were Treasury agents, and said, "Captain, that's a package of diamonds you have got to be sent to Cincinnati," and if I didn't deliver it I would be arrested. After a while I went down in my room and brought the package up and delivered it over to the Treasury agents. That's all that happened.
Q. Who were the Treasury agents?
A. A gentleman sitting there, Mr. Gallen, and Mr. Cummins (identifying same).
Q. Did you give Mr. Gallen any description of Herman Keck, whom you had met in Antwerp?
A. Yes, sir; when I was up before the collector, Mr. Read, I gave a description.
Q. State, upon the solemnity of your oath, whether you
67 have any doubt that that is the man that you met in Antwerp.
A. No, sir; I have no doubt that that is the man.
Q. Please indicate who the man is, for there are a number of men here. Which is Keck?
A. The fourth gentleman sitting at that table.

By the COURT:

Q. With rather sandy-colored hair?
A. With a red moustache.

(Mr. Keck was here directed by the court to stand up.)

By the COURT:

Q. Is that the man you mean?
A. Yes, sir.

Cross-examination.

By Mr. SHIELDS:

Q. You have seen this same gentleman walking up and down the corridor for two or three days, have you not, outside?
A. Yes, sir; two or three days.

Q. Do you really mean to say that you did identify him? Was he not pointed out to you the very first day of the hearing, right in the entry? Didn't this gentleman here, Mr. Gallen, go past him and look at him and call your attention to him, and then did you not pass him two or three times and nod your head to Mr. Gallen that you recognized him? Didn't that occur?

A. I knew the man.

Q. Didn't that happen, as I have described it to you? Do you remember the day that Mr. Keck came here for the hearing?

A. Yes, sir; I remember that—the 18th of March.

Q. Do you remember that you were outside in the corridor
68 before the hearing took place?

A. Yes; I was.

Q. Did not Mr. Gallen pass the defendant, Mr. Keck, once or twice and point him out to you, and then did you not walk past him once or twice and nod back to Mr. Gallen that that was the man?

A. I passed by the man and I recognized him, and I said so.

Q. Didn't Mr. Gallen point him out to you?

A. No, sir.

Q. Did you have a talk with Mr. Gallen?

A. Yes, sir; afterwards.

Q. Did you before?

A. Of course, I spoke with Mr. Gallen before.

Q. Did not you and Mr. Gallen have a talk as to which was the man?

A. No, sir.

Q. Nothing was said?

A. No, sir.

Q. Why did you pass him two or three times if you recognized him so quickly?

A. When I recognized the man I went in again, and I said that man was there.

Q. Did you not pass him two or three times?

A. I went up and down once, maybe, or twice. I don't know.

Q. Did you not do so two or three times?

A. That may be.

Q. If you recognized him so quickly, what was the necessity of going by two or three times?

A. Because I was walking up and down.

Q. Is that the only explanation you can make for going past him two or three times?

69 A. I recognized the man; that is all. I walked up and down. I had nothing to do. It wasn't for that reason I passed by him.

Q. You walked past him two or three times?

A. Yes, sir.

Q. After you had, it was then that you stated that that was the man, was it not?

A. Yes, sir.

Q. If you recognized him as soon as you saw him, what was the

necessity for your going past him two or three times? Why did you do that?

A. My intention wasn't to pass three times there to know him, because I knew him from the first moment I saw him.

Q. You knew him?

A. Yes.

Q. You are positive that neither Mr. Gallen nor any other man pointed him out to you, before you walked past him, as Mr. Keck?

A. They didn't point him out, but they said Keck had arrived, because I asked if Mr. Keck had arrived.

Q. Who did you ask?

A. Mr. Gallen.

Q. When you asked him that question he replied, "Yes; there's the gentleman"?

A. When I came in, yes; I saw him. That's what I said. I saw the man.

Q. You have said that you asked Mr. Gallen if Keck had arrived.

A. Yes, sir.

Q. When you asked him that it was in the corridor, was it not?

A. No, sir; in the other room.

Q. The district attorney's room?

70 A. Yes, sir.

Q. When you asked him that question he pointed him out, did he not?

A. No, sir.

Q. What did he say?

A. "Mr. Keck has arrived."

Q. Was Mr. Keck there at that time?

A. When I came out he was in the corridor.

Q. He was not in the room?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. You had never seen this man but once, had you?

A. No, sir; not before in Antwerp.

Q. You had never seen him before?

A. No, sir; never.

Q. You were with him how long in Antwerp?

A. I should say about half an hour, maybe, more or less.

Q. Do you recall how he was dressed on that occasion in Antwerp?

A. He wore a black suit and a black hat—a soft or a Derby hat; I don't know which.

Q. You don't recall whether it was a soft or a Derby hat?

A. No, sir.

Q. Did he have any overcoat on?

A. I don't remember.

Q. Why cannot you give us some reasonable explanation why you can't remember whether he had an overcoat on or not?

A. He had a black suit on; I don't know whether he had an overcoat on or not.

Q. What enabled you to recognize him so quickly in Philadelphia, never having seen him before, and then only for
71 half an hour?

A. Only his features.

Q. Which features?

A. On his face.

Q. Do you mean the general appearance of the man?

A. And the general appearance of the man.

Q. Was it the general appearance?

A. The general appearance of the man.

Q. No particular marks or anything of that kind about him?

A. No, sir.

Q. You were caught with this material, were you not?

A. Yes, sir; having it on board.

Q. Who spoke to you first about it; was it Mr. Cummins or Mr. Gallen?

A. Mr. Gallen.

Q. Did Gallen go to the room with you?

A. Yes, sir; with me.

Q. Did you lock the door?

A. No, sir.

Q. Did you close the door?

A. That's what I can't remember.

Q. Don't you remember that you closed it and locked it?

A. No, sir; I never locked the door. I remember that I didn't lock the door.

Q. Why can't you remember whether you closed it or not, if you remember particularly that you did not lock it?

A. I didn't lock the door.

Q: State the reason that you remember one instance and not the other. You remember distinctly that you did not lock it?

A. Yes, sir.

72 Q. You don't remember whether you left it open or not?

A. No, sir.

Q. Do you remember what you did when you got in there?

A. Yes, sir.

Q. Did you throw anything out of the window?

A. No, sir.

Q. Are you quite sure of that?

A. Yes, sir.

Q. Have you not said that you did throw things out of the window?

A. I never said anything like that.

Q. Never, to anybody?

A. No, sir.

Q. As a fact, did you not?

A. No, sir.

Q. Did you not have other smuggled goods there?

A. No, sir.

Q. Of no kind?

A. No, sir.

Q. No packages?
A. No, sir.
Q. You had not carried anything of that kind over before for anybody?
A. Never.
Q. Do you know Mr. Hendrichson?
A. Yes, sir.
Q. Did you not have an order for him?
A. No, sir.
Q. What is his business?
A. He is a watch merchant and jeweler.
Q. You and he had been friendly for a long while?
A. I knew him for the last five or six years.
73 Q. Did you visit him?
A. Yes, sir.
Q. You visited him just before this last trip, did you not?
A. Before the last trip, I was there in the beginning of January.
Q. How many days did you sail after that visit?
A. I believe a few days afterwards.
Q. Did you not carry with you his card, with some writing on the back of it?
A. No, sir.
Q. Are you quite sure of that?
A. Yes, sir.
Q. Did you not have Mr. Hendrichson's business card with you?
A. I got that nearly a year ago.
Q. Did you not have that card on the last trip?
A. It may have been that I had it on board; yes, sir.
Q. Is it not a fact that it may be that you did have it at that time?
A. It may have been that I had a card at the time of Mr. Hendrichson.
Q. Was there not some writing on the back of it?
A. That I don't know.
Q. You would know if you carried the card for a year. Mr Hendrichson lives where?
A. In Newark, New Jersey.
Q. You had that card, you say, for a year?
A. Yes, sir; nearly a year. I don't say that card. I say I got his card. We may have changed cards; that is more than a year; I can't remember the exact time.
Q. What was the object of carrying his card abroad?
A. Because we exchange cards, you know. Of course, when I am at sea I carry it along.
74 Q. Was that the reason you were exchanging cards, that he gave you his business card?
A. We exchanged cards; that's all.
Q. He was your friend for five years before that?
A. Yes, sir.
Q. What was the object of exchanging cards?
A. Well, we were together, and we exchanged cards.

Q. Exchanged your business cards?
A. Yes, sir.
Q. What was the object of that?
A. As friends, exchanging one another's cards. There are more friends than us.
Q. Please recall whether or not there was not some writing on the back of that card that you have in your pocket.
A. No, sir.
Q. You had it on the 27th of January, did you not?
A. No, sir.
Q. When had you parted with it?
A. In the beginning of January. I can't remember the exact time when I saw Mr. Hendrichson.
Q. I ask you, when did you part with that card?
A. That was last year.
Q. You said you had it.

The COURT: No; he did not say that; he said he might have had it.

By Mr. SHIELDS:

Q. When was the last you remember having it?
A. I had that card about the end of last year.
Q. Did you not have it in January?
A. No, sir.
75 Q. Didn't I understand you to say that you parted with it in January—the early part of January?
A. No, sir.
Q. You did not say that you parted with that card in the early part of January?
A. No, sir.
Q. Didn't that card have an order for these very diamonds?
A. No, sir.
Q. Did it have any order on it?
A. No, sir.
Q. Did it have any writing on it?
A. No, sir.
Q. Did you not say a moment ago that you could not tell whether it had or not?

The COURT: He said before that it had not.

By Mr. SHIELDS:

Q. Do you now say that it had no writing on it?
A. No, sir; there was no writing on the card that I remember.
Q. When did you part with that card, as nearly as you can state?
A. I told you the end of last year.
Q. State the circumstances under which you parted with it and who you left it with.
A. I may have given it to Mr. Von Hemmelrick.

Q. Mr. Von Hemmelrick is the man that you got the diamonds from?

A. That is the one who introduced me to Mr. Keck, and told me that those diamonds belonged to Mr. Keck.

Q. It is the same man, Von Hemmelrick, is it not?

A. Yes, sir.

Q. Mr. Von Hemmelrick handed you the diamonds, did he not?

A. In that café he handed me the package, telling me that
76 there was nothing in it.

Q. Mr. Keck did not hand you anything, did he?

A. No, sir; he handed me a paper; yes; the address.

Q. But he did not hand you that inside, did he?

A. Inside the café.

Q. There were quite a number of people in the café?

A. Yes, sir.

Q. Was that openly and publicly, so that everybody in the café could see it?

A. Yes, sir.

Q. No concealment about it?

A. No, sir.

Q. Everybody in that room—to the number of how many—could see it?

A. I should say that there were thirty or forty people in the café at that time.

Q. You left Von Hemmelrick's house to go over to the café?

A. Yes, sir.

Q. There was nothing said about delivering diamonds and carrying them over to America there?

A. No, sir.

Q. They waited until they got into this public place; that is correct, is it not?

A. Yes, sir.

Q. Was the pen and ink convenient there, on the beer table?

A. Yes, sir.

Q. He did not have to call for it; it was there right on the table for him to write?

A. It was right there by Mr. Keck.

Q. On the same table that you had the beer? Is that right?

A. It was right on the same table we had the beer; yes.

77 Q. It did not occur to you to ask him at the time you were in the public saloon how you were to send this to Cincinnati?

A. No, sir; I didn't ask that in the café.

Q. How far had you gone in the street?

A. There is a square outside the café; we went about fifty feet in the middle of the square.

Q. You are quite sure as to the day this occurred?

A. On the 27th.

Q. On Monday?

A. Yes, sir; in the afternoon.

Q. Do you remember distinctly that that was the day of the week?

A. Yes, sir.

Q. Do you remember distinctly that it was the 27th of January?
A. Yes, sir.
Q. You don't remember the hour, do you?
A. No, sir; I don't remember the exact hour.
Q. Do you remember about what time—between what hours it was?
A. Between three and four o'clock—about between three and four o'clock.
Q. You are quite sure of that?
A. Yes, sir.
Q. It was not before three or after four?
A. It was between three and four.
Q. You are quite sure as to that, are you?
A. Yes, sir.
Q. Where did you put the package—in your pocket loose?
A. I put it loose in my pocket.
Q. Where did you put the paper?
A. Along with it—along with the box.
Q. Loose?
78 A. Along with the box.
Q. You never tied the paper to it?
A. No, sir.

By the DISTRICT ATTORNEY:

Q. Nothing was put in the box in your presence?
A. No, sir; it wasn't opened until we arrived here, by the Treasury agents.

By Mr. SHIELDS:

Q. You put that address loose in your pocket, without attaching it to the package in any way?
A. Yes, sir.
Q. When you got aboard the ship, where did you put the package?
A. In the drawer.
Q. Where did you put the paper?
A. Afterwards I put it in a little case.
Q. In a pocket-book, or something of that kind?
A. Yes, sir; in a pocket-book.

By the COURT:

Q. Why did you not put the paper containing the address on the package—fasten it there? Why did you keep them separately?
A. I kept that and put it afterwards with the package in another paper and wrote the address on myself.
Q. How is that?
A. I left off the address besides, and it was my minding to wrap that package in another paper when I arrived here and then put the address on it; I intended to do that.
Q. Why did you not fasten the address and the package together?
A. Because I put it in my pocket-book—that address. I didn't do that at the time.

By Mr. SHIELDS:

79 Q. You had other papers there in that card-case or pocket-book?
A. My cards.
Q. No other cards?
A. No. sir.
Q. No other papers?
A. No, sir.
Q. Nothing else but just that one piece of paper?
A. No, sir.
Q. What else was in that drawer? How many packages?
A. There was anything else in there—cards, everything.
Q. There were other little boxes, were there not?
A. No, sir.
Q. Do you mean that you had no packages and boxes in that drawer?
A. No, sir.
Q. Or in that state-room?
A. No, sir; only that package.
Q. You did not bring any other smuggled goods over but these?
A. No, sir.
Q. You are quite sure of that?
A. Yes, sir.
Q. You never did smuggle?
A. No, sir.
Q. You have never been accused of it?
A. No, sir.
Q. Do you swear to that?
A. Yes, sir.
Q. Did you sail on the Cockrell line?
A. Yes, sir.
Q. What steamship was that?
A. I sailed over about 18 years ago on the "Concha."
80 Q. When was the last time you sailed over?
A. 17 or 18 years ago.
Q. Are you quite sure that it has not been since that?
A. Yes, sir.
Q. Was the Concha the last vessel?
A. Yes, sir.
Q. Wasn't she seized while she was in your hands?

(Objected to unless connected with this defendant.)

Q. Wasn't she seized for having on board smuggled goods? Weren't smuggled goods found right next to your cabin?

(Objected to. Objection sustained.)

Q. Have you not been in the habit of bringing packages over for friends?
A. I have brought packages over—little presents that I thought weren't valuable—but I never omitted to go to the custom-house

officers and ask them if I might pass them on the dock; only things that contained no valuables.

Q. Did you go to the custom-house officers in this case before they went to you?

A. I had just arrived. I wasn't ashore.

Q. The passengers were on the wharf?

A. Yes, sir; the passengers were landed.

Q. You had made out your manifest, had you not?

A. The manifest is always made before we land.

Q. Where do the officers come aboard?

A. Alongside of the dock. Which officers do you mean?

Q. I mean the custom-house officers.

A. They came aboard on the river.

Q. At quarantine?

A. Yes, sir.

81 Q. How long had they been aboard before you had landed your passengers?

A. It may have been half an hour before we landed them or an hour; I don't know exactly.

Q. At that time the passengers were making declarations of what they had and swearing to them before the custom-house officers?

A. Yes, sir; they are always down in the saloon then.

Q. Making their declarations to the custom officers?

A. Yes, sir; but we are not present then.

Q. Did you permit the custom-house officers to leave that ship and go on the wharf without telling them that you had this package and ask them whether you could land it?

A. The passengers were on land; every one was on land. It wasn't a thing of importance.

Q. Did you not say that you always did ask them?

A. No, sir; I didn't say that.

Q. I understood you to say it.

A. You asked if I brought packages over before, and I said I always went on shore and asked the custom-house officers on the dock.

Q. Why should you not ask the other custom-house officers when they are on board the ship? Why wait until they get off on the wharf?

A. Because they never asked before that—little things.

Q. You have said that when you brought packages over before of no value that you always asked the custom-house officers if you could land them. Did you not say that?

A. Yes, sir; on the dock.

Q. Why do you wait until you get on the dock?

82 A. Because I didn't ask them before.

Q. Did you always wait until they get on the dock?

A. Yes; when I have something.

Q. Did you ask them on the dock this time or wait until they came to you?

A. No, sir; I didn't ask anything this time.

Q. You waited until the officers came to you, did you?

A. The officers didn't come to me; Mr. Gallen, the Treasury agent, came aboard.
Q. When he came he came from the wharf, did he not?
A. Yes, sir.
Q. He had been on the vessel before?
A. I don't know that.
Q. You saw the custom-house officers there?
A. Yes, sir; they are always on board when we arrive.
Q. You say you had never heard of Mr. Keck?
A. No, sir.
Q. You did not recall his name?
A. No, sir.
Q. The first time you knew of his name was when you saw him in the room here?
A. No, sir.
Q. When was the first time?
A. When Mr. Gallen came on board the ship.
Q. That was the first time you heard Mr. Keck's name, when Mr. Gallen came on board the ship?
A. Yes, sir; I didn't remember the name in Antwerp.

By the COURT:

Q. You had not carried the name away in your memory? At Antwerp you did not remember the name of the man?
A. That is what I said.
Q. At Antwerp you were introduced to Keck by your friends?
A. Yes, sir.
Q. Did you continue to remember his name or did it pass out of your mind?
A. It passed out of my mind.
Q. Until his name was mentioned to you on arriving?
A. Yes, sir.

By Mr. SHIELDS:

Q. So that practically that was the first moment that you had ever remembered the name of Keck, when Gallen mentioned it to you?
A. Yes, sir.
A. If he had mentioned Johnson it would have been the same thing, would it not?
A. I do not know.
Q. You would not have known any difference?
A. No, sir.
Q. All you know was the man when you saw him in the court-room or in the district attorney's office? It was the man's face?
A. It was the man's face.
Q. You did not identify him by his name at all, did you?
A. No; not by his name. I identified him by his face.
Q. When Mr. Gallen came up there and mentioned Mr. Keck's

name that was the first time that you remembered of hearing the name?

A. Of hearing it before; yes, sir.

Q. You had lived in Antwerp a great many years, had you not?

A. Always sailing.

Q. You had lived there?

A. Yes, sir; had lived there.

84 Q. Did you have a family?

A. No, sir; I am not a married man. I have got my father there.

Q. You lived at Antwerp, and that is your natural home?

A. Yes, sir; that is my home.

Q. You knew a great many people there?

A. Yes, sir; I was born there.

Q. Franz Van Reeth was a celebrated diamond-cutter in that city, was he not? He took a great many medals?

A. I don't know about that.

Q. Did you not read the Antwerp papers?

A. Sometimes; yes, sir.

Q. Do you not remember very frequently before that he had taken a number of medals?

A. I do not know about that; I did not follow that up; that was not in my line.

Q. You knew Van Reeth?

A. No, sir.

Q. You knew of him?

A. I don't know him.

Q. Do you mean to say you had never heard of Van Reeth in Antwerp?

A. That may be, but I don't know.

Q. You won't deny that you had heard of him?

A. It may be; I do not know.

By the DISTRICT ATTORNEY:

Q. Did you ever hear of Van Reeth?

A. I do not know; I might have read about that, but I don't recollect the name.

By Mr. SHIELDS:

Q. Did you ever read that paper (paper shown witness)?

A. Yes, sir; I can read it.

85 Q. Did you ever read it?

A. It might be that I read that.

Q. Did you not see Mr. Van Reeth's name there and a picture describing him?

A. I see it here.

Q. Did you not before this?

A. I do not recollect that.

Q. Try and recollect it.

A. I do not recollect it; so many papers I see. I am a year away from Antwerp. Those papers I seldom read.

Q. Look at the date of the paper.
A. 5th of March, 1895.
Q. Will you say on your oath you did not see the picture of this man and remembered him as being a celebrated diamond-cutter of that city?
A. I may have, but I do not recollect.

By the COURT:

Q. Have you any recollection of seeing that man's picture and reading about him? Have you any memory of it?
A. I might have.

By the DISTRICT ATTORNEY:

Q. Have you any recollection? Do you recall ever having seen the name or picture of Van Reeth, a diamond-cutter?
A. I may have seen it, but I do not recollect it.

By Mr. SHIELDS:

Q. Did you not read in the papers and was it not known all over Antwerp that this same Van Reeth, whose name is on that paper, had left for America and gone to Cincinnati to establish a diamond-cutting factory?
A. I heard about that; that many people went over; that many diamond-cutters went over.
The COURT: You are asked if you heard about this particular man. If you did, say so. Did you hear anything about Van Reeth coming over to this country to establish a place for diamond-cutting?
A. Yes, sir. I heard about it, but not that particular name.

By Mr. SHIELDS:

Q. What was the name?
A. Other people. I don't recollect the name.

The COURT: The question is whether you heard of this man Van Reeth coming over to this country to establish a place to cut diamonds. Not somebody else, but Van Reeth. Did you hear of that?
The WITNESS: I heard of people coming over.

By Mr. SHIELDS:

Q. Is not that a picture of him? (Paper shown witness.)
A. I do not know. I never saw him.

Redirect examination.

By the DISTRICT ATTORNEY:

Q. Did you ever hear the name of Van Reeth before it was written on that slip of paper by the defendant, Herman Keck, that you remember?
A. I remember that name.
Q. Do you remember ever having heard of the name Van Reeth before Keck wrote that upon this piece of paper?

A. There are many names like that.

Q. Do you recall that you ever heard that name?

A. I do not recollect.

Q. You do not recollect even having heard the name Van Reeth before Keck wrote it on paper?

87 A. No, sir.

Q. In the first place, in this conversation in the Café Alsacienne and when you crossed the Place Vert, did Keck talk in Flemish or English?

A. English.

Q. Is it an unusual thing for a restaurant in Antwerp to have pens and ink on the table?

A. There is always ink in restaurants.

Q. As matter of fact, in Antwerp is it not a fact that in the middle of the day people leave their work, government offices are closed, and people go into the restaurants and play cards and dominoes, and write their letters, &c.?

A. Yes, sir.

Q. What hours in the middle of the day are those?

A. From noon until three o'clock.

Q. And then they work in Antwerp from about three to seven?

A. Some people sits longer, too.

Q. While it is true, as you have said, that in the Café Alsacienne this slip of paper and box was handed so that anybody could hear, I want to ask you whether or not the conversation between you and Von Hemmelrick and Keck was sufficiently loud to be heard by the people in that café.

A. We spoke just the same as other people.

Q. If I recall the Café Alsacienne, there are different tables, are there not?

A. Yes, sir.

Q. Those tables are separated?

A. Yes, sir; close to one another.

Q. Could that conversation have been heard at any other table or not?

88 A. I think it could have been heard.

Q. Just before you get into port state whether or not you are busy.

A. Yes, sir.

Q. On this particular day were you as a captain very busy when you came into port?

A. Yes, sir. We are always on the bridge until the ship gets landed.

Q. As a captain you have considerable to do?

A. Yes, sir; we always stand on the bridge going up the river.

Q. What were you doing at the time Mr. Gallen came into your room?

A. I was filling my abstract of log.

Q. That is one of the things that has to be done at the end of a journey?

A. Yes, sir.

Q. After the passengers have been cleared by the custom-house fficers the captain can then have the opportunity to speak to them?
A. Yes, sir.
Q. Had all the passengers landed at that time?
A. Yes, sir.
Q. How long before had they all landed?
A. Maybe a half hour.
Q. State whether or not this card of Henrickson's had anything hatever to do with the delivery of this package to you by this on Hemmelrich?
A. Nothing.
Q. As matter of fact, have you ever knowingly brought any arcle of value into this country without paying the duties?
A. No, sir.
Q. As matter of fact, did you receive any consideration, inducement, or payment whatever for bringing this package to America?
A. No, sir.
Q. Was any promise made?
A. No, sir.
Q. As matter of fact, the duties were not paid upon this package?
A. No, sir.
Q. I understand that you were walking up and down the corridor t here awaiting the commissioner's hearing?
A. Yes, sir.
Q. Was your recognition of Keck by reason of anything whatr Gallen said to you?

(Objected to.)

Q. Please state whether or not when you recognized Keck in the rridor of this building Gallen had said or pointed out to you ck as the man.
A. No, sir.
Q. Had anybody?
A. No, sir.

Recross-examination.

By Mr. SHIELDS:

Q. You say that you were arrested by the officers, were you not?
A. No; I was not arrested. The officers found them in my posion.
Q. Were you not arrested by the officers and brought before the mmissioner?
A. Yes, sir.
Q. Were you not indicted for this very offense?
A. Yes, sir.
Q. And you are under indictment now?
A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. Referring to the last question that has been asked you by counsel, I want to ask you whether any promise or inducement of immunity has been given to you by any one if you would
90 testify against Mr. Keck.

(Objected to.)

The COURT: You may ask him whether any promises have been made in consideration of his testifying against this man.

By the DISTRICT ATTORNEY:

Q. Has any promise been made to you as a consideration for testifying against Mr. Keck?

A. No, sir.

Q. Did I ever have any words with you until you were on the stand now?

A. No, sir; this is the first time we ever met.

By Mr. SHIELDS:

Q. But you have counsel, have you not, who have communicated with the district attorney?

A. I have a counsel.

Q. He told you it would be better to testify against Keck, did he not?

A. I tell the truth.

Q. Did not your counsel tell you it would be a good deal better?

A. The counsel told me to tell the truth.

Q. Did he not tell you it would be better for you to testify against Keck?

A. I told the truth; my counsel told me to tell the truth.

By the COURT:

Q. You know that you are under indictment; you know that you are charged with smuggling, do you not?

A. Yes, sir.

Q. Do you expect, by reason of anything that has been said to you, that your chances of getting off will be improved by testifying against Keck?

A. I think so because I have told the truth and was only made a tool of his. I did not know what was in the package; I never would have risked my position if I had.

91 By the DISTRICT ATTORNEY:

Q. As matter of fact, before you were arrested you told this story to the collector of the port?

A. Of course I told it to the collector of the port.

By Mr. SHIELDS:

Q. After you had had a talk with Gallen?

A. No, sir.

Q. Had you not had a talk with Gallen first?

A. On board.

92 JOHN C. GALLEN, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. What is your official position?

A. Special agent of the United States Treasury Department.

Q. Stationed where?

A. At Philadelphia.

Q. Please say exactly what you know in relation to the landing of the Rhineland and of the subsequent landing of the Aller.

A. Acting on information received that, at the instance of Herman Keck, the captain of the "Rhineland" had endeavored to smuggle diamonds, I met the steamship "Rhineland" upon her arrival here on the 11th day of last February, about four or five o'clock in the afternoon. I went aboard and examined the passenger list to see if Keck was on board or any one under that name, and I also examined the manifest to find if there was any diamonds. I found no one particularly on the passenger list corresponding to the name of Herman Keck, and no diamonds appeared on the manifest.

Q. When did the custom-house inspectors get on board the "Rhineland"?

A. The weather was very rough that day, and the boarding officers boarded just as she was coming into the dock. I then asked one of the custom inspectors to examine closely the baggage of one or two of the cabin passengers, whom I suspected, to ascertain whether they had any large quantity of jewelry, after which I went into the chart-room, where the captain was, with Special Agent Cummings. I spoke of the weather and other topics, and then I said, "Captain"—to whom I was unknown—"you have a package for the Coeterman Diamond Company—the Coeterman-
93 Keck Diamond Company, 24 West Fourth street, Cincinnati, Ohio?" I repeated the name of the company. He said, "No; I have no such package." I said, "I beg leave to differ with you," and, indicating with my fingers, I said, "You have a small package which you received while in Antwerp." He said, "I have a package for Van Reeth, of 21 West Fourth street, Cincinnati, Ohio, and I will give it to you if you have an order for it."

Q. At that time, I understand you to say, he did not know you were a Treasury agent?

A. No, sir; I was unknown.

Q. Had you ever met him before?

A. Never met him before to know him. I then said, "Captain, I have an order for them." He said, "Show me the order, and I will go and get the package." I replied, "Captain, I would like to see the package first before delivering the order, and I want to speak to you in private."

Q. Was there anything on your clothes like a badge or anything else to show what you were?

A. No, sir; none whatever. He was doing some writing at the time—I think finishing the log—and he asked me to wait until he

finished, and I said, "Certainly." After the lapse of about five minutes the captain arose and said, "You remain here, and I can go and get the package." As soon as the captain left the chart-room I quietly and unperceived by him followed him and saw him enter his room, and just as he emerged he had a package in his hand. As soon as I saw it I said, "Captain, that is the package I want." He said, "Where is your order?" I produced my card as United States Treasury agent. He refused to let me have it
94 until I was identified as a custom-house officer. A young man present at the conversation opposite the captain's room, who represented the steamship company—we agreed to go back to the chart-room, where I again insisted on getting this package, and this young man who represented the steamship company, who was present, advised the captain to give the package to me, which the captain did. I then searched thoroughly the captain's room and also other parts of the vessel, but did not find any other dutiable stuff, after which I went into the chart-room again and opened the package in the presence of the captain—broke the seal and opened the package.

Q. Did you have any conversation with the captain as to where he got this package? I mean before this?

A. No, sir; I did not have any conversation with him.

Q. You have told us all that took place up to the time that you broke the seals?

A. Substantially.

Q. I understand you to say that you told him that he had a package for the Coeterman-Keck Diamond Company and he denied it?

A. Yes, sir.

Q. The captain mentioned he had a package for Van Reeth?

A. Yes, sir; I broke the seals and opened the package in the presence of the captain and found it contained diamonds.

Q. Do you know how many diamonds?

A. We counted them the next day at my office and I think the number was 563.

Q. Were they cut or uncut diamonds?

A. The condition they are in now. I am not a judge of diamonds.

Q. Look at that box and tell me whether that is the box.
95 A. Yes, sir; that is the box which I seized.

Q. Was the box in that condition, with the exception of the tearing of the paper?

A. With the exception of the tearing of the paper. That paper was around the box and then there was another seal right in the corner.

Q. It was torn off in the tearing of the paper?

A. Yes, sir.

Q. Was there any address whatever upon the box?

A. No address on the box whatever.

Q. Was there any paper inside of the box?

A. There was a small paper containing twenty-eight diamonds and some writing on it.

Q. Tell me whether or not that is the paper?

(Paper shown witness.)

A. Yes, sir; that is the paper that contained the twenty-eight diamonds in the box. Those twenty-eight diamonds were separate.

Q. I understand these diamonds were all in the packages that they are now?

A. Yes, sir; but the twenty-eight were separate from the others.

Q. They were wrapped up?

A. Yes, sir.

Q. Is that the paper they were wrapped in when you opened the box?

A. They were wrapped in finer paper—tissue paper—and then placed in cotton. The twenty-eight were in a separate piece of paper in the same package.

Q. I understand you to say those are not the papers they were wrapped in?

A. I don't think so. It was very soft tissue paper. That one with the marks on contained the twenty-eight diamonds.

96 Q. The captain was present when the box was opened?

A. Yes, sir.

Q. Did you have any conversation with him as to where he got this package?

A. Not at that time.

By the COURT:

Q. Did he tell you anything about the diamonds?

A. Yes, sir; the day before he did.

Q. That day?

A. No, sir; he did not.

Q. He did not make any explanation?

A. No, sir.

Q. You asked him for the diamonds and you took them.

A. Yes, sir.

Q. Did you tell him why?

A. No, sir.

Q. Did you tell him by what authority?

A. Yes, sir; I told him I was a United States Treasury agent, and this package containing diamonds was not on the manifest.

Q. And you took them, therefore, as smuggled goods?

A. Yes, sir.

Q. You told him that?

A. Yes, sir.

Q. And he did not make any explanation?

A. He said he was no smuggler.

Q. Did he say anything else?

A. Not that day. I did not ask him anything.

By the DISTRICT ATTORNEY:

Q. Did he say whether he knew what was in the package?

A. He said he didn't know what was in the package.

97 Q. Did he say anything when the box was opened and the diamonds displayed?

A. He said he didn't know the contents of that package.

Q. What took place next day?

A. The next day he called at my office and I asked him if he had any explanation to make.

(Objected to.)

The COURT: His declarations cannot be used against the defendant. What this man said when the diamonds were first found upon him might be evidence as part of the *res gestæ*, and it would be safe to admit it, but what he said afterward certainly is not evidence against this defendant.

By the DISTRICT ATTORNEY:

Q. Did the captain give you a description of the man who gave the diamonds to him?

(Objected to. Objection overruled. Exception allowed for defendant.)

A. Yes, sir.

Q. What was the day when he gave you the description?

A. The day after I seized the diamonds.

Q. What was the description that the captain gave of the man whom he alleged gave him, the captain, the diamonds?

A. He described him as a man about the size of Collector Reed, not quite as stout, a small, reddish-brown mustache, small features, small eyes, and blonde complexion.

By the COURT:

Q. Did he name the man?

A. No, sir; he could not give me his name.

Q. That is, he did not remember it?

A. He did not remember it?

By the DISTRICT ATTORNEY:

Q. That was before you mentioned the name to him?

98 A. Yes, sir.

Q. Acting on that description and information, what did you do?

A. I went over to New York to await the arrival of the "Aller," which was due on the 14th of February last.

Q. From what port does the "Aller" sail?

A. I couldn't say whether it was Antwerp or Bremem; I don't know.

Q. When did the "Aller" get in?

A. She arrived about nine o'clock Friday evening.

Q. Tell us in your own way what took place on the "Aller."

A. I went down on the revenue cutter about three o'clock in the afternoon from New York and went down the bay to about Staten

island, a little below where we boarded the "Aller" about eight o'clock. I went into the dining-room and other parts of the vessel to see if I could discover a man answering to the description furnished me by the captain. After a short time I picked out a man corresponding to that description, who was in company with a young man.

Q. Who did you pick out on the captain's description?

A. That gentleman there (pointing to defendant).

Q. You mean the defendant, Herman Keck?

A. Yes, sir.

Q. Had you at that time any information whatever, except the information of the captain, to pick Herman Keck out?

A. No other description whatever.

Q. How many passengers were on the "Aller"?

A. I could not say. I should judge there would be about ninety, or about that. I would not be able to say.

Q. You mean ninety first-cabin passengers?

A. Yes, sir.

Q. She is a pretty large steamer, is she not?

99 A. Yes, sir; very large. One of the largest that sails from New York.

Q. Tell us, in your own way, what you did when you picked out the defendant.

A. I followed him around the steamer, and as he was coming out of the urinal into the corridor leading to the dining saloon I went up to him and said, "Is your name Keck?" He said, "Yes." I asked him, "Are you acquainted with Captain Loesewitz, of the steamship 'Rhineland'?" He said, "No." He said he was not acquainted with the captain. Then I said, "I have a package which I obtained from the captain to be delivered to a man named Keck, expecting to arrive at New York on the steamer 'Aller.'" He said, "I am not the man." I said, "Do you belong in Antwerp or the United States—Cincinnati?"

By the COURT:

Q. He said he was not the man?

A. Yes, sir; he said he was not the man. I said I had a package which I obtained from Captain Loesewitz, of the steamship "Rhineland," for a man named Keck, who is expected to arrive on that steamer. He said, "I am not the man." I asked him if he belonged to Cincinnati or Antwerp. He said, Cincinnati. Then I said, "You are not the man I am looking for."

By the DISTRICT ATTORNEY:

Q. Did he give his address in Cincinnati at the time?

A. I don't recollect.

Q. Was that all the conversation that took place at that particular time?

A. That is all that took place on board the "Aller."

Q. What took place next? Who was the young man who was with him?

100 A. I was informed his name was Van Reeth, a son of one of the managers of the Coeterman-Keck Diamond Company of Cincinnati, Ohio.

Q. They were traveling together?

A. Yes, sir.

Q. What next took place?

A. After Mr. Keck and his companion's baggage was examined by the custom officers of New York I took him to a room on the pier and said to him again, "Is your name Herman Keck?" He said, "Yes.", There were several custom-house officers present there.

Q. Are any of them here?

A. Yes, sir; Mr. Murray was present, Mr. Donohue, Mr. Brown, and Special Agent Cummings. He said, Yes. I asked him again if he was acquainted with Captain Loesewitz, of the steamship "Rhineland," and he said he was not. I said, "I received a package containing diamonds in the possession of the captain at Philadelphia on the 11th, and from the description furnished me, corresponding so closely to yourself, I will have to ask you to come over to Philadelphia on the next train and ascertain if the captain can identify you as the person." He said, "It would not pay me to be engaged in any business of this kind. We are worth $300,000." I said, "That is true. The captain may possibly want to throw the blame on you and relieve himself." He said, "Certainly, I will go with you to Philadelphia." I turned around to make preparation to take the next train. Before I finished Keck turned around and said, "I don't think I will go. I haven't been treated right here tonight." I said, "I am not responsible for that." He said, "I will insist on my rights. You will have to get the necessary papers to take me to Philadelphia."

101 Q. He said he would require the necessary legal papers before going to Philadelphia?

A. Yes, sir.

Q. Did you have any conversation with him as to who he was, what his business was, and where it was?

A. Yes, sir; I turned around then and said to him, "This package." I held it in my hand that way.

Q. Illustrate to the jury just how this incident happened.

Witness illustrated to the jury by holding box covered with his hand and stated, I held the package in that position in my hand and said to him, after he refused to go with me, I said, "Here is the package which belongs to your firm, the Coeterman-Keck Diamond Company of Cincinnati." He said, "There is no address on that package."

Q. I want to ask you whether it was possible for him to have seen that there was no address on that package at the time.

(Objected to. Objection overruled.)

Q. Was the package held by you at that time so that Keck could see it?

A. No one could see it. I kept the package in my own pocket. No one saw it but myself.

By the COURT:

Q. You had not shown it to him?
A. No, sir.
Q. You had it how in your hand?
A. That way (illustrating). I did not want him to see the package at all.
Q. You say he could not see whether it had an address on it or not?

102 A. I don't think he could, because my object in holding the package was so that he could not.

By the DISTRICT ATTORNEY:

Q. That was your specific object, so that he could not see it?
A. Yes, sir. He said, "There is no address on that package." I said, "That is a good description of the package. There is no address on it." But I said, "The captain was instructed to deliver it to Van Reeth, 21 West Fourth street, Cincinnati, Ohio." He said, "That is a different firm from the Keck Company." I said, "Are you not a member of the same firm with Van Reeth?" He said, "Yes; I am." I said, "Then this package belongs to your firm." He said, "It does not." I said, "We have the diamonds in Philadelphia and they belong to some one." He said, "I am the only one that has a right to purchase diamonds for either one of those concerns."
Q. What two firms were they?
A. I said the Coeterman-Keck Company and the Van Reeth.
Q. I understood you to say that he admitted that he was a member of the firm of Van Reeth?
A. The same firm as Van Reeth.
Q. You have no doubt about that?
A. No doubt whatever.
Q. You held that box so the palm of your hand would cover at least three sides?
A. Yes, sir; I held it down close to the sides so he could not see it.
Q. Who met Mr. Keck at the dock, if you know?
A. The gentleman who I ascertained to be Mr. Jones, an attorney for Mr. Keck.
Q. A member of the New York bar?
A. I think he was a member of the Cincinnati bar.

By the COURT:

Q. Where did you meet him?

103 A. I met him at the pier. Just as soon as Keck walked down and landed on the pier he was met by a person named Jones, Keck's attorney, from Cincinnati.
Q. At that time you had not seen Keck?

A. I saw him on the "Aller," when we boarded her by Staten island.

Q. How long was that before?

A. We boarded her about eight o'clock.

Q. You say the man met him at what hour?

A. About nine o'clock.

Q. Just as Mr. Keck came on shore?

A. Just as he came on the dock.

By the DISTRICT ATTORNEY:

Q. On the "Aller" you had not charged him with smuggling?

A. No, sir; not in the least.

Q. You had said on the "Aller" that he was not the man you were looking for?

A. Yes, sir; that is right.

Q. Did he state what his business was in Cincinnati?

A. He said his companies were the pioneers of the diamond industries in the West.

Q. Did he make a statement in regard to the amount of diamonds that he had imported into this country?

A. Yes, sir. He said that he had imported into the port of Cincinnati one hundred thousand dollars worth of diamonds from the first of the year. I said to him, "You are mistaken;" that I had a telegram in my pocket in reply to a telegram sent to the appraiser at the port of Cincinnati, and that the total amount of his importations of diamonds at the port of Cincinnati from the first of January to that date did not exceed the value of the assignment
104 which I found in the possession of the captain at Philadelphia, and they were valued at seven thousand dollars. He said, "What are the amounts of my importations?" I said, "You know. I am not going to tell you."

Q. You are positive that he said it was through the port of Cincinnati that he imported the one hundred thousand dollars' worth of diamonds since the first of January?

A. There is no doubt about it. From the first of January to date.

Q. Did he give the business address of the Coeterman-Keck-Henrickson Diamond Company?

A. I think he said one was located at 21 and the other at 19 West Fourth street, Cincinnati, Ohio.

Q. When was it that you first saw, and under what circumstances, that slip of paper addressed to F. Van Reeth, 21 West Fourth street, Cincinnati?

A. I first saw this paper at the hearing before Commissioner Bell on the case against Keck.

Q. You did not get it from the captain?

A. No, sir.

Q. Did you see it gotten from the captain?

A. At that hearing.

Q. Who produced it at the hearing?

A. The captain. At the hearing before Commissioner Bell Cap-

tain Loesewitz produced this paper, and that was the first time I saw it.

Q. Did you make any search of Van Reeth's baggage, who came over with him?

A. No, sir; I made no searches of either the baggage of Van Reeth or Keck.

Q. Were you present?

A. I was present, but some distance away.

105 Cross-examination.

By Mr. SHIELDS:

Q. What is your special duty?

A. To protect the customs revenue.

Q. And to find smugglers?

A. Yes, sir. Reappraisement, classification, establish rates of drawback, and all frauds and crimes committed against the custom service.

Q. Therefore it is part of your duty to find people who smuggle?

A. Yes, sir.

Q. You say you received the information about this smuggling. Did you get that from Mr. Cummings or from Mr. Hess?

A. I received it from Mr. Cummings.

Q. Was Mr. Hess with him when you received it?

A. No, sir.

Q. When was the first knowledge you had that Mr. Hess was in the case?

A. I received the information from Special Agent Cummings by telegraph; not from Mr. Hess. I did not know that Mr. Hess was in the case at the time.

Q. In consequence of that information you boarded this vessel?

A. Yes, sir.

Q. The "Rhineland"?

A. Yes, sir.

Q. You there met the captain at what point of the vessel?

A. In the chart-room.

Q. You told him that he was accused of smuggling?

A. No, sir; I did not. I said, "Captain, we do not charge you with smuggling. I do not think you are a smuggler."

Q. What led him to say that he was no smuggler?

106 A. I don't know. I cannot give you any reasons for that.

Q. You do not know what made him say he was not a smuggler?

A. No, sir.

Q. You had not intimated to him that he was a smuggler?

A. No, sir; not in the least, excepting getting the package.

Q. Then, without any intimation from you, directly or indirectly, that he was a smuggler or was accused of smuggling, he declared he was no smuggler?

A. He said, "I am not engaged in smuggling." I said, "Captain, I do not say you are."

Q. Did you find other smuggled goods on that ship?

A. We did not, but some of the custom inspectors found some small quantity of drugs. That had nothing to do with the captain; that was found in the possession of one of the seamen.

Q. You do not know whether the captain gave it to him or not?

A. No, sir. It was too small a value. It amounted to $20 or $40.

Q. That is all you found?

A. Yes, sir.

Q. Is that the only occasion that you found it on this steamship?

A. That is the only occasion.

Q. The only time?

A. Yes, sir.

Q. When you asked him about this package he said first that he had not any, did he not?

A. I said, "Captain, you have a package for the Coeterman-Keck Diamond Company, of 21 West Fourth street, Cincinnati, Ohio." He says, "No; I have not such a package." I said, "I beg leave to differ with you; you have a small package"—and I indicated the size by my fingers—"which you received while in Antwerp, and I want it." He says, "I have a package for Van Reeth, 21
107 West Fourth street, Cincinnati, and if you have an order for it I will go and get it for you."

Q. At that time he did not give the first name, did he?

A. Yes, sir; he said F. Van Reeth, 21 West Fourth street, Cincinnati.

Q. You are quite sure he gave the initial at that time?

A. Yes, sir.

Q. At that moment?

A. Yes, sir.

Q. The same initial that you subsequently found on this paper when it was produced at a hearing? How many weeks afterwards?

A. About four or five weeks.

Q. So that up to that time you had not seen this paper?

(Paper shown witness.)

A. Never saw the paper until it was produced at the hearing.

Q. At the captain's hearing?

A. Yes, sir.

Q. At the hearing at which he was bound over?

A. No; not the captain's hearing, but Keck's hearing.

Q. Had the captain had his hearing before?

A. Yes, sir; the captain had his hearing and was indicted.

Q. He had been indicted at that time, had he?

A. Yes, sir.

Q. He did not produce this paper at his own hearing?

A. No, sir; I think he waived a hearing.

Q. Did you ask this man how Keck was dressed when he was giving you this general description that you have spoken of?

A. I do not recollect whether I asked him how he was dressed or not. I possibly may have, but I do not recollect.

Q. You do not recollect asking what kind of hat he wore or what kind of clothes?

08 A. Probably I did, but I cannot say positively now.

Q. You were a special agent?

A. Yes, sir.

Q. Specially charged to perform this detective work, were you ot?

A. Not specially for that work.

Q. You were engaged in that kind of work?

A. Once in a while.

Q. At this particular instant you were engaged in it, were you ot?

A. Yes, sir.

Q. Therefore it was important for you in the performance of that etective work to get all these details?

A. Yes, sir.

Q. Why can you not recollect?

A. I might have asked him. My recollection will not bear me ut that I did ask him, and I won't say anything. I do not recol-ect.

Q. How can you remember the other so well?

A. Because I was very particular to get Keck's description.

Q. Being particular, was it not very important in the perform-nce of such detective work to get the description of the clothing?

A. Yes, sir.

Q. As you always do so?

A. Yes, sir.

Q. Can you account for the fact why you did not do so this time?

A. I cannot say but what I did, but my recollection cannot bear ne out. I may possibly have asked the captain for the clothes.

Q. You do not remember that part of it?

A. No, sir.

Q. But you do remember the other?

A. Yes, sir.

Q. Will you explain to the jury why, as an officer perform-

09 ing that particular duty, you remember distinctly as to part of what happened but have no recollection as to the other?

A. I may have overlooked that.

Q. That is the only explanation you have to make, is it?

A. Clothes is not a good criterion to go by. In a great many of ny cases I pay no attention to clothes whatever. All I want is the hysical features of the man—size and complexion. I pay no at-ntion to the clothes.

Q. I understood you to say you usually do ask about the cloth-ng.

A. I do not.

Q. Did you say that a moment ago that you did?

A. I may have said that, but I did not.

Q. If you do not do it, why did you say you did do it?

A. When you ask a person for a description, the features, the size, nd complexion was the most material part.

Q. You say now that you did not ask about the clothes?

A. I do not say that I did not. I say we may ask. I do not consider it an important feature.

Q. You went to New York with whom?

A. Myself.

Q. Whom did you meet there?

A. I met Special Agent Cummings.

Q. And?

A. And Mr. Hess.

Q. And Mr. Frankel?

A. No, sir; I did not meet Mr. Frankel—at least, I did not know any one by that name. I met a gentleman.

Q. Do you know the secretary of the Diamond Cutters' Association?

A. Not by name.

110 Q. Did you meet him?

A. I could not say that I did.

Q. Was Mr. Hess counsel for that company?

A. My information leads me to believe that he is.

Q. Mr. Hess was there also with Mr. Cummings, the special agent, in New York to meet you when you landed. That is true, is it not?

A. No. When I arrived at the St. Dennis hotel I received a letter from Mr. Hess saying he would like for me to call on him when I arrived. I called on him. He was busy at the time; at least it was more convenient for me to go to meet him.

Q. Did he come down to the "Aller" with you and Mr. Cummings?

A. No, sir; he did not come on board the "Aller" at all. I did not see Hess then until late that evening, when we arrived on the "Aller" at the pier.

Q. You found him on the wharf on the arrival of the "Aller"?

A. Yes, sir.

Q. With whom? Was it not Mr. Frankel, the secretary of the Diamond Cutters' and Importers' Association?

A. I do not know Mr. Frankel by name.

Q. Was it not a gentlemen who was identified as such to you?

A. There was a gentleman introduced to me as representing Frankell & Company; I thought he was the gentleman.

Q. As matter of fact, you have said this information came from Mr. Cummings and Mr. Hess?

A. No, sir; it came from Special Agent Cummings.

Q. Do you not know that the persons behind this transaction of Keck's were the diamond merchants in New York?

A. I do not know anything about it and I do not care. We are only interested for the Government.

Q. Is not that true?

111 A. No; I do not know that it is true.

Q. Do you know what Mr. Hess was doing there with you and Cummings on the wharf?

A. I took it for granted he was assisting us, the customs officers.

Q. When you first spoke to Mr. Keck there was no denial on his art that that was his name?
A. None whatever.
Q. None as to where he lived?
A. No, sir.
Q. And none as to the business he was engaged in?
A. No, sir.
Q. When you first suggested that he should come over to Philadelphia he said frankly and at once he would, did he not?
A. Yes, sir.
Q. After that will you tell the court and jury what was the treatment that he complained of?
A. I did not see anything outside of the usual treatment afforded passengers.
Q. Did you not see these officers seize his private papers, which ney were subsequently obliged by the Government at Washington return?
A. No, sir; I did not see them.
Q. Did you not see them take them?
A. No, sir; I did not.
Q. Do you not know they did?
A. I heard afterwards, but I do not know of my own knowledge.
Q. Is not that the very treatment that he complained of?
A. No; not to me.
Q. How many officers were there surrounding this one man?

The COURT: This man may state what search he saw made, and that is as far as he can go, and what was found.

By Mr. SHIELDS:

Q. What search did you see made?
A. Very little. They commenced to examine Mr. Keck's baggage the pier, and I was about as far as that railing from him, and ter working for about five minutes at it they took him in the ivate room, and I did not go in that room or near the room or look the window to see what was being done.
Q. Who was in the room with him?
A. Two or three officers.
Q. You saw nothing of the search at all?
A. Nothing except what I just told you.
Q. Mr. Keck did come over to the city of Philadelphia without ing brought here, did he not, by papers or anything else?
A. Yes, sir. We did not want to arrest him in New York.
Q. He did come over without any arrest and without any papers?
A. Yes, sir.
Q. In the course of your conversation with him, I understood you say that it was possible; that perhaps the captain wanted to put on him.
A. Yes, sir.
Q. What was it you said exactly as to that?
A. I cannot say the exact words. He said to me—I thought this

way. He showed a disposition to go over right away, and I thought very possibly there might be a mistake on the part of the captain. He was very willing to meet the captain, and I thought if he was guilty of it he would not be so willing to do so; but as soon as he turned around and recovered himself he said he would not go and would insist on his rights; that he had not been treated fairly there.

113 Q. What excuse did he give for not coming over?

A. He said, "I don't think I will go. I have not been treated right tonight. I will insist upon the necessary papers."

Q. It was after he had been searched that he made that remark?

A. Yes, sir; after he had promised to go over.

Q. And after he had been searched?

A. Yes, sir. I told him I was not responsible for that searching.

Q. Did you show him the package on board the "Aller"?

A. I held it in my hand so that if he looked very close he might have been able to see it.

Q. You do not recollect exactly how you held it on board the ship, do you?

A. Yes, sir; I do; the same way.

Q. You have just now said that you did not know.

A. I made my mind up in showing that package I would hold my hand over it, so it would be difficult for him to see what was on it, whether there was any address there.

Q. But you held it in your hand, did you not?

A. Yes, sir.

Q. You turned it down?

A. With a determination to so hold it he would not be able to see the address.

Q. You turned it down?

A. No, sir.

Q. Did you not show it to him?

A. No, sir.

Q. Are you positive of that?

A. I am positive.

Q. At any stage?

A. At any stage, except through the hearing.

Q. I am speaking either on board the vessel or on the wharf.

114 A. That is right. I did not show it.

Q. Where was it that he told you that it had no mark on it; was it on board the vessel or on the wharf?

A. In the room, after he had refused to come over.

Q. Had you not talked with him and held it in your hand before he went into the room?

A. No, sir; I held it in my coat. I had my left hand in my coat.

Q. Did not bring it out at all?

A. I had it in my hand, in my overcoat.

Q. Did you not have it out?

A. Yes, sir; I had it out.

Q. You had it out on the wharf, did you not?

A. No, sir; I did not have it on the wharf. I had it out in the room when I asked him the question.

Q. Did you not show it to him on the wharf and put it right to him?

A. No, sir.

Q. And say to him, "Wait, Mr. Keck, until we confiscate all your factory and ruin your business"?

A. No, sir; never used such word.

Q. What was it you said about confiscation?

A. I never said a word about confiscation.

Q. Did you make a threat of any kind?

A. No, sir.

Q. No indication of a threat?

A. No; no indication whatever.

Q. You were asked the question as to who met him. Mr. Jones, as you learned, had been in New York for some weeks, attending to Mr. Keck's business, did you not?

A. I did not know anything about that.

Q. Did you not hear him say so?

115 A. No; I do not recollect of hearing him say so.

Q. You did not hear it stated by Mr. Jones right then and there?

A. I do not recollect him saying so; he may have said so.

Q. Was it you that charged Mr. Keck with passing a package to Mr. Jones?

A. No, sir; never.

Q. Who was it?

A. I do not know; I do not know of any such assertion.

Q. Did not Mr. Jones demand then and there that he should be searched?

A. No, sir; not in my presence. I do not know anything about it; I do not know whether Mr. Jones was searched.

Redirect examination.

By the DISTRICT ATTORNEY:

Q. You were asked as to the captain's statement, "That I am no smuggler." Was that said before or after you had told him that you were a Treasury agent, and that he was suspected of having brought these diamonds in improperly?

A. After I had shown him my card and told him who I was.

Q. Then it was that he said he was not a smuggler?

A. Yes, sir.

Q. State the day that Mr. Keck came over to Philadelphia, whether you pointed out Keck to Captain Loesewitz before the captain identified him.

A. No, sir; on the contrary, I had the captain in the private office of the district attorney, and Keck and two other gentlemen were about seven or eight feet, or about that distance, north of the entrance to the United States district attorney's office, and there were quite a number of people in the corridor that day, making

application to be naturalized. I said to the captain, "Now,
116 I want you to go out and turn to your right and go all the way down the corridor and look around and see if you can identify this man that you got the diamonds from, and then turn and go down and see if you can find him." He did so. I watched him; he went all the way down; he could not find any one down at the lower end of the corridor; he walked northward and saw three gentlemen standing together, and he came back to me and said, "One of those three gentlemen; the one that has the cabba in his hand."

Q. Who was that?

A. That was Keck. I said, "Captain, are you positive of that?" He said, "Certainly, I am positive of it. That is the man; no doubt about it."

Recross-examination.

By Mr. SHIELDS:

Q. You were examined before the commissioner at the hearing of Mr. Keck, were you not?

A. Yes, sir.

Q. I understood you to say that you are quite sure that you had never spoken to Mr. Frankel, the secretary of this association?

A. Yes, sir.

Q. Do you remember what you swore to before the commissioner?

A. Yes, sir. I thought that the gentleman that I spoke to was Mr. Frankel. I ascertained afterwards it was not. It was a representative of Mr. Frankel's.

Q. You did swear before the commissioner that you had spoken to him?

A. Yes, sir. I thought it was Frankel, but I ascertained afterwards it was a representative of Mr. Frankel.

Q. The same Mr. Frankel who is secretary of this Diamond Cutters' Association?

A. I do not know. I could not say.

117 By the COURT:

Q. That is, the man whom you said was Frankel you discovered afterwards was his representative?

A. Yes, sir.

Q. You were misled?

A. Yes, sir.

JAMES C. CUMMINGS, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. What is your official position?

A. Special agent of the Treasury Department.

Q. Located where?

A. New York city.

Q. You were present on the "Rhineland" at the time these diamonds were seized?

A. I was.

Q. Were you there for the purpose of seizing these diamonds when they came in?

A. I was here operating in connection with Mr. Gallen, who seized the diamonds.

Q. You had some information these diamonds were coming?

A. Yes, sir.

Q. Tell us in your own way what occurred.

A. I think it was about the time that the captain said to Mr. Gallen that he had a package for Van Reeth that I came into the captain's chart-room.

Q. You were not in when Gallen started the conversation?

A. No, sir; I came in as the captain said he had a pack-
118 age for Van Reeth, Cincinnati.

Q. Did you hear whether he was asked that question before he answered it?

A. That I do not know.

Q. You just heard him say that as you entered?

A. Yes, sir; he then asked Mr. Gallen if he had an order for the package and Mr. Gallen said that he had, and the captain said, "Give me the order and I will give you the package." Then Gallen said, "Give me the package and I will show you the order." After the captain had finished writing off his log book the captain said he would go down and get it. He started down and Mr. Gallen followed him down to the room, and I went down also, and the captain produced the package down in his room.

Q. Where did he have it?

A. In his room.

Q. He produced it?

A. Yes, sir.

Q. Was the door locked when you came there?

A. It was not.

Q. Was it open?

A. Yes, sir; they were standing right in the doorway.

Q. Is this the package that he produced? (Package shown witness.)

A. Yes, sir.

Q. Was it opened in your presence?

A. Yes, sir.

Q. What did it contain?

A. It contained the cut diamonds.

Q. Do you know how many?

A. No, sir.

Q. There were quite a number, were there not?

A. Yes, sir.

119 Q. Were these seals upon it?

A. Yes, sir.

Q. Was there any address upon the package?

A. There was not.

Q. What, if anything, did the captain say as to his knowledge of the contents of that box?

A. The captain said that he did not know what was in the box.

Q. Did he say that before it was opened?

A. Yes, sir.

Q. Did he say from whom he got it?

A. No, sir; not in my presence.

Q. What else, if anything, do you recall that was said that day?

A. That is about all that occurred in my presence.

Q. Did you hear a description given the next day to Mr. Gallen?

A. No, sir; I left that night for New York.

Q. You went over to New York and you were on board the "Aller" when it landed, were you not?

A. I was.

Q. Were you present when the conversation took place between Gallen and Keck?

A. On the "Aller" or on the pier?

Q. You were not present at the first conversation when Keck came out of the urinal, were you?

A. No, sir.

Q. When was it that you first saw Keck?

A. I saw him in the cabin of the vessel.

Q. Who were present?

A. A number of passengers and the regular official officers.

Q. What, if any, conversation did you have with him or any one else in your hearing?

120 A. None on the boat.

Q. Tell us what next took place.

A. When the vessel docked, Mr. Keck and a young man came along with him—Mr. Van Reeth—and they were watched by different officers.

Q. They were traveling together, were they?

A. They were traveling together.

Q. Do you know what the full name of this Van Reeth was?

A. He was on the passenger list as # C. Van Reeth.

Q. They were taken together to what place?

A. They were not taken together; they were kept separate on the dock.

Q. Where was Keck taken?

A. Keck was taken in one of the offices. I think the office used for the customs.

Q. By whom?

A. By the regular officers.

Q. And other officers went with Van Reeth?

A. Yes, sir.

Q. Were you present when Gallen had conversation with Keck after they left the "Aller"?

A. No, sir; I was there very little.

Q. Did you hear any portion of it?

A. No, sir; not much.

Q. You devoted most of your time to Van Reeth?

A. Yes, sir.

Q. Was there anything found in Van Reeth's trunk connected with the diamond business?

A. There was quite a large quantity of diamond paper, used in wrapping diamonds—quite a large quantity.

Q. Were there any implements used in the cutting of diamonds?

121 A. Yes, sir.

Q. Do you know whether or not a cablegram was sent to him that you saw?

(Objected to. Objection sustained.)

Q. You were not present when Mr. Gallen had the box and Mr. Keck made the remark there was no address on it, were you?

A. No; I did not hear it.

Cross-examination.

By Mr. SHIELDS:

Q. You are engaged in the same business as Mr. Gallen, only you are in New York and he is here?

A. Practically the same.

Q. You are the Mr. Cummings that gave Mr. Gallen his information?

A. Yes, sir.

Q. You got it from Mr. Hess?

A. I did not.

Q. Who did you get it from?

A. I decline to answer.

Q. Will you say whether you got it from the secretary of the Diamond Cutters' Association?

A. I decline to answer anything connected with where I got my information. I decline to answer where I got my information.

The COURT: You may ask him whether he got it from a particular source.

By Mr. SHIELDS:

Q. You got the information from Mr. Frankel, did you not, the secretary of the Diamond Cutters' & Importers' Protective Association, or something of that kind?

A. I will not answer, only under the order of the court.

The COURT: The court will require you to answer.

A. I did.

122 By Mr. SHIELDS:

Q. When he was arrested you searched his baggage, did you not?

A. I did not.

Q. Were you present when it was done?

A. I was not.

Q. Did you not get his private correspondence from his baggage?
A. I did not.
Q. Did you not have it in your possession?
A. I did; it was turned over to me.
Q. It was taken and turned over to you?
A. Yes, sir.
Q. And you subsequently were required by the Government to return those private papers to him, were you not?
A. No, sir; I returned them of my own volition.
Q. You did return them?
A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. Those papers were turned over to you by the advice of Mr. Keck's attorney, were they not? Mr. Keck's attorney advised Mr. Keck to turn over the papers.
A. I don't know as to that; they were put into a little satchel.
Q. Was there any objection at all?
A. No, sir.

By Mr. SHIELDS:

Q. You were not there when they were taken, were you?
A. No; I was not there when his baggage was examined.
Q. How do you know there was no objection?
A. There was no objection when the package was turned over to me.

By the DISTRICT ATTORNEY:

Q. The information you get from the department in cases
123 of violation of the law you are instructed to regard as confidential, unless the court instructs you to answer?
A. Yes, sir.
Q. A great deal of reference has been made to this retail dealers Diamond Cutters' Protective Association; that is an association to prevent the violation of the revenue laws in matters of the importation of jewelry?
A. It is; it is composed of the most reputable diamond brokers in New York city.
Q. It is composed of the entire dealers of the United States?
A. Yes, sir.

(At one o'clock the court took a recess until two o'clock.)

2 P. M.

TIMOTHY J. DONAHUE sworn.

By Mr. BECK:

Q. What is your present position?
A. Inspector of customs.
Q. Stationed at what port?
A. New York.

Q. Were you present on board the "Aller" when it came in with Herman Keck as a passenger?

A. I was.

Q. You saw Mr. Keck, did you, on that occasion?

A. I did.

Q. Had you ever seen him before?

A. Not before that time.

Q. What, if anything, did you do? Tell us in your own way.

124 A. After he made his declaration on board the ship I was ordered by the deputy surveyor to keep watch on him to see with whom he connected on board the ship. Myself and another inspector by the name of John Murphy were told by the deputy to watch him and see whom he connected with, and until after the baggage was examined on the pier. We did so, and after his baggage had been examined the deputy surveyor gave this order to take him on board the ship and search his person, and we took him on board and took him to a state-room and searched his person?

Q. Who were present?

A. Inspector Murray, myself, and Mr. Keck.

Q. What, if any, conversation did you have with Mr. Keck, and what did he say as to who he was and where he came from?

A. He told me it was ridiculous to detain him, to suspect that he was smuggling in diamonds; that he was doing a business of nearly $300,000 a year, and was importing his diamonds regularly.

Q. What, if anything, did he say as to how much he had imported since the first of the year?

A. He did not say the first of the year, but he said he imported nearly $300,000 a year.

Q. What, if anything, did he say as to who he was?

A. He said that he was connected with a firm in Cincinnati.

Q. Did he mention what firm it was?

A. That he did all the buying for the firm.

Q. Did he say buying of what?

A. Buying diamonds.

Q. Did he say what firm it was?

A. Yes, sir.

Q. What one was it?

A. I think he said Keck & Co.

125 Q. Did he mention any other firm?

A. No; not at that time.

Q. Did he at any other time?

A. Yes, sir; later on he did.

Q. What was it?

A. I am a little ahead of my story. I asked him who the young man was that was in his company, that was on the pier, which Special Agent Cummings and Inspector Brown were watching. He said he was a young man, the son of the manager of their firm in Cincinnati. I also asked him if he had any diamonds, and he said he did not.

Q. Did he mention the young man's name?

A. Not at that time he did not.
Q. Did he afterward?
A. Yes, sir.
Q. What was the name?
A. I think he said Van Reeth.
Q. And he said Van Reeth had no diamonds?
A. He said he did not have any.
Q. He said Van Reeth was a son of the manager?
A. Of the manager.
Q. What was the exact expression?
A. He said the manager of their firm.
Q. Did he mention the name of the firm that he was manager of?
A. He did not say. This is the way he said the words: "He was manager of our firm."
Q. Were you present when Mr. Gallen had the conversation with Mr. Keck in regard to the box?
A. Part of the time I was.

Q. What, if anything, did you hear Mr. Gallen say to Keck
126 or Keck to Gallon?

A. I heard Mr. Gallen tell him that he had better come to Philadelphia. I think he said that there was a train about 11 or 11.30—some time—and confront the captain, and if the captain had made a mistake, if he was not the man, it was all right; but the captain had made a declaration that he answered the description of the man who, the captain said, gave him the diamonds in Antwerp. Mr. Keck said he would go, but later on he refused to go.
Q. What reason did he give?
A. They had several arguments there, talking about going. At one time Mr. Keck said he would go. Another time he said he would not go and Mr. Gallen said, "Now, there is no harm in your going. If you are not the man and the captain don't identify you, there is no harm in your going." He said he could not, for he did not know the captain.
Q. Did you see Gallen have this box?
A. I did.
Q. The way he held it, could you see whether there was any address upon it?
A. I could not.
Q. Did you see him when he asked Mr. Keck about for whom this package was intended?
A. No; I was not listening to him at that time.
Q. Were you present when a conversation was had between Keck and Gallen, when Keck said there was no address upon that package?
A. I would not like to swear that I was present then.
Q. You were in and out, were you?
A. I am a little hard of hearing, and there were a number of officers in the custom-house office on the pier at the time of the conversation between Mr. Gallen and Mr. Keck.

127 Q. Did you hear Keck say to Gallen whether or not he was in Antwerp on January 27th?

A. I have heard Mr. Gallen charging him with being there and being in the Hotel Victoria. I think he said the Victoria. He said he was not there.

Q. Was not where; at the Victoria?

A. In Antwerp.

Q. He was not in Antwerp?

A. Yes, sir.

By the COURT:

Q. Did he say he was not there?

A. He said he was not in that hotel and Gallen said he was in another café. I forget the name, but Keck said he might have been.

By Mr. BECK:

Q. Did Gallen mention the date?

A. About the 27th of January.

Q. As I understand it, to clear it up, Gallen charged him with being in Antwerp, at the Hotel Victoria, on January 27th?

A. Yes, sir.

Q. And thereupon Keck denied that he was at the Hotel Victoria?

A. Yes, sir.

Q. And then Gallen charged him with being at a café whose name you have forgotten?

A. Yes, sir.

Q. Would you remember the name of the café if I mentioned it?

A. I think I would.

Q. Was it the Café Alsacienne?

A. I think that was the one.

Q. When he charged Keck with being present on January 27th, at the Café Alsacienne, what, if anything, did Keck say?

128 A. He said he might have been there.

Q. That is all the reply he gave?

A. That was about all I heard.

Cross-examined.

By Mr. SHIELDS:

Q. Your hearing is a little defective, is it not?

A. At times; but, if I want to listen to you, I can do so pretty well.

Q. On that day it was, as you have frankly stated, a little defective?

A. Well, a little bit.

Q. Do you recall whether he said he imported $300,000 or that the firm was worth $300,000?

A. He said he was doing business and importing diamonds; doing a business of about $300,000 a year.

Q. Then, the two together, he was doing business and importing $300,000?

A. He said he was doing a business of $300,000 a year.
Q. And was also importing?
A. Importing; yes, sir.
Q. Did he not say that the firm was worth $300,000?
A. I did not ask him what the firm was worth.
Q. Are you sure you have got it right?
A. I have got it right.
Q. You are quite positive about that?
A. Yes, sir.
Q. You were not on the "Aller" with him when Mr. Gallen had the box, were you?
A. I was.
Q. Mr. Gallen says there was nobody there at that time.
A. We boarded the ship as quick as Mr. Gallen did.
Q. Were you with Mr. Gallen?
129 A. No, sir.
Q. I mean you were not with Mr. Gallen?
A. I went on board the "Aller" with Mr. Gallen.
Q. Were you with Mr. Gallen when he showed the box or had the box in his hand on board the ship?
A. I was not, but I saw him show him in the office.
Q. Where you saw him was on the wharf, was it not?
A. I did not see him on board the ship showing it to him.
Q. You did not see him on board the ship; it was on the wharf?
A. On the wharf.
Q. The district attorney asked you what reason Mr. Keck gave for not going over. Was it not because he said he had been treated badly, and that his papers had been taken from him?
A. I do not know what his reasons were.
Q. Did not Mr. Keck state those reasons?
A. Not in my presence.
Q. Were you there when Mr. Gallen was there?
A. I was.
Q. You heard what Mr. Gallen said about it?
A. Not all the time. The deputy surveyor and Mr. Gallen and two or three other inspectors were there most of the time. The deputy surveyor had taken the papers.
Q. When the district attorney asked you if you searched his person did you state you searched him?
A. I did.
Q. Did you find anything about him or about his baggage?
A. No, sir.
Q. Nothing was concealed in his baggage or about his person?
A. No.
Q. You examined it thoroughly and carefully?
130 A. I examined his person thoroughly.
Q. You examined his baggage thoroughly?
A. I did not.
Q. Who did that?
A. Another officer.
Q. You were present?

A. Part of the time; yes, sir.
Q. Even the soap he had was broken, was it not?
A. I did not see the soap broken.
Q. Was it not broken up?
A. There were three or four rough diamonds found in his baggage; two or three or four, I will not be sure which, whether it was four or three.
Q. What were they?
A. They were found in his satchel, and a scale for weighing diamonds, a package of diamond polish, and that is about all.
Q. They were all on the free list, were they not?
A. They were all amongst his papers.
Q. They were on the free list, were they not?
A. No, sir.
Q. They were not dutiable?
A. They were not on the free list, but I do not believe there was enough for duties.
Q. You do not mean to say they were rough diamonds, do you? It is what is called diamond bort, is it not?
A. Something like that.
Q. Just answer the question. What you found there you call rough diamonds?
A. I think they were rough diamonds before they are cut and polished.
Q. Are they not called diamond bort?
31 A. I do not know.
Q. On the free list under that name?
A. They are subject to the same duty.
Q. You did not seize them, did you?
A. I did.
Q. What did you do with them?
A. The officer who examined his baggage was called the appraiser. The appraiser said there was not enough there for duty.
Q. Did he say that they were diamond bort?
A. I do not know what the appraiser rated them as.

Redirect examination.

By Mr. BECK:

Q. Were those diamonds on his declaration as a passenger?
A. No, sir.

JOHN P. MURRAY sworn.

By Mr. BECK:

Q. What is your official position?
A. A special employee of the United States Government.
Q. In what capacity?
A. Looking to stop smuggling.
Q. You are a custom-house inspector?
A. A custom-house inspector.

Q. Did you board the "Aller" on the occasion when Herman Keck was a passenger?

A. No, sir; I met her at the dock.

Q. You were there for the purpose of inspecting baggage?

A. No; I was there for the purpose of seeing the baggage was properly inspected.

132 Q. Did you see Keck on that occasion?

A. Yes, sir.

Q. Had you ever seen him before?

A. No, sir.

Q. You have no difficulty in recognizing him now?

A. No, sir.

Q. You were present with Mr. Donahue when his baggage was searched?

A. Yes, sir.

Q. Tell us in your own way what, if any, conversation you had with Mr. Keck as to any matter.

A. The only conversation we had with Mr. Keck was just as Mr. Donahue said. We took charge of him from the time he struck the dock, saw that the inspector properly examined his baggage, and after his baggage was examined we took him on board the ship to the state-room he occupied on the voyage and searched him. While searching, we asked him who Mr. Van Reeth was—the young man who was with him. He said he was a son of the manager of one of their concerns in Cincinnati.

Q. Did Keck mention what his business was?

A. Yes, sir; he said he was a diamond dealer and purchaser for a house in Cincinnati.

Q. Did he say where the address of that business house in Cincinnati was, in your hearing?

A. He did.

Q. What was it?

A. I do not recollect the name of the street.

Q. Would you recollect it if I stated it to you?

A. Yes, sir.

Q. Was it 21 West Fourth street, Cincinnati?

A. I believe it was.

133 Q. Did he name the firm that he was connected with?

A. Not at that time; he did not.

Q. Did he at any subsequent time?

A. When he was being examined in the custom-house office by Mr. Gallen he said that he was a member of two or three concerns in Cincinnati—that is, that he was associated with two or three different concerns in Cincinnati.

Q. Did he give their name?

A. Keck and Co. and some other name he gave; yes, sir.

Q. Did he name Coeterman-Henrickson-Keck Company?

A. Yes, sir.

Q. Did he say which of these firms this young Van Reeth, his traveling companion, was a son of the superintendent of?

A. Of the cutting and polishing concern.

Q. Did he mention the name?
A. I do not know whether he did or not. He said he was manger of the cutting and polishing concern in Cincinnati.
Q. Cutting and polishing of what?
A. Diamonds.
Q. Did you hear the conversation between Gallen and Keck as to whether or not he was in Antwerp on January 27th?
A. Yes, sir.
Q. What took place?
A. He said that he was in Antwerp on the 27th, and asked him if he was at a certain hotel—I believe it was the Victoria. He said no. He then asked him if he was not in some café; I believe the Alsacienne. I do not believe he answered that. He said he might have been.
Q. Were you present when Gallen had the box in his hand and Keck said there was no address upon it?
A. Yes, sir.
Q. Tell us what took place as you remember it?
A. Mr. Gallen said to him, "I have got a package that the captain of the 'Rhineland' said belongs to your concern." He said, "It does not; there is no address on it."
Q. Where was that package at the time Keck said that?
A. In Mr. Gallen's hands.
Q. How was Mr. Gallen holding it?
A. He was holding it something like that (indicating).
Q. Was he holding it so you could see the address that was upon the box?
A. No, sir.
Q. How near Keck were you?
A. I was as near to him as I am to you.
Q. In your judgment, could Mr. Keck have possibly seen whether that address was upon the box?
A. I do not think so.
Q. Had Mr. Gallen that box in his hand before that that you saw?
A. I never saw it before that.
Q. Did you see him draw it from his pocket?
A. Yes, sir.
Q. Just describe what he did?
A. He took it out and said, "Here, I have got a box for your concern from the captain of the steamship 'Rhineland,' landed in Philadelphia."
Q. Then Keck said, "There is no address upon that box"?
A. He said there was no address on the box; he also said it was addressed to Van Reeth & Co., Cincinnati.
Q. Who said that?
A. Mr. Gallen. He said, "You are a member of that concern?" He said, "Yes; I am the only man that has got any authority." He said, "I am the purchaser for that concern of all diamonds—purchase all diamonds for that concern."

Q. He said he was the only one who purchased diamonds for Van Reeth & Co. and that he was a member of that firm?

A. Yes, sir.

Q. Do you recall any other feature of the conversation?

A. About him going to Philadelphia.

Q. Can you tell us whether, before he refused to go to Philadelphia to meet Captain Loesewitz, he had been in consultation with Mr. Jones, his attorney?

A. Yes, sir; and Mr. Jones was authorized to keep away from him.

By the COURT:

Q. What is it you say?

A. I say the deputy surveyor told Mr. Jones this man was under suspicion, and the best thing he could do was to let him alone until the custom-house officers got through with him. Afterward he was left with Mr. Jones and Mr. Jones allowed to speak for him.

By Mr. BECK:

Q. It was after the interview he declined to go to Philadelphia?

A. Yes, sir.

Cross-examined.

By Mr. SHIELDS:

Q. Do you mean to swear it was after the interview with Mr. Jones he declined to go to Philadelphia; is that true?

A. Is what true?

Q. That it was after the interview with Mr. Jones that Mr. Keck declined to go to Philadelphia, as you have just sworn?

A. He declined first to go; then afterward, when we went out on the dock, he had an interview with Mr. Jones again.

136 Q. Had he declined before the interview with Mr. Jones to go to Philadelphia?

A. He agreed to go first.

Q. Will you please answer my question?

A. I am trying to, if you let me. He agreed to go first. Then he said, "I object. I have got some rights here. I object to go." We brought him on the dock. Mr. Gallen said he would put him under arrest if he did not go. Then he had an interview with Mr. Jones. Whatever they agreed to do they agreed to come the following day.

Q. You just now said after the interview with Mr. Jones he declined to go. Now you say after the interview with Mr. Jones he agreed to go.

A. I say he agreed and refused to go, both before and after.

THOMAS BARRY sworn.

By Mr. BECK:

Q. Where do you live?

A. I live in Cincinnati, Ohio.
Q. What is your position?
A. Letter-carrier.
Q. Do you serve letters on the route where this man's business place is located?
A. Yes, sir.
Q. I want you to describe what No. 21 West Fourth street, Cincinnati, is. How long have you served letters at that place?
A. Since August, 1890.
Q. What signs are upon that business place?
A. "Keck Manufacturing Co.;" "Keck Diamond Company." That is all the signs that I ever noticed.
137 Q. What mail do you deliver at that place which is received?
A. I deliver the Keck Manufacturing Company's, the Coeterman-Henrickson-Keck Diamond Company's, and anything addressed to Herman Keck or Mr. Austin.
Q. You also deliver mail to the Coeterman-Henrickson-Keck Diamond Company at that place?
A. Yes, sir.
Q. Have you noticed what is the character of the mail that is delivered to the Coeterman-Henrickson-Keck Diamond Company, with reference to the place from which letters come?
A. Foreign.
Q. You have noticed that they are all foreign letters that go there?
A. Yes, sir.
Q. What about domestic mail from the United States?
A. Domestic mail is mostly to the Keck Manufacturing Company.
Q. Have these concerns different rooms for their business purposes?
A. I deliver the mail all in one place.
Q. All in one room?
A. Yes, sir.
Q. Will you please state whether or not you have delivered mail to all these concerns, and to Herman Keck individually?
A. I have.
Q. Frequently or infrequently?
A. Frequently.
Q. Has any mail addressed to the Coeterman-Henrickson-Keck Diamond Company been returned to you as not properly delivered?
A. No, sir.
Q. Do you know F. Van Reeth?
A. I do not.
Q. Is there a sign "Van Reeth & Co." at 21 West Fourth street, Cincinnati?
138 A. No, sir.
Q. Is No. 19 as well as No. 21 West Fourth street on your route?
A. Yes, sir.

Q. Is there any sign of "F. Van Reeth" or "F. Van Reeth & Co." upon either of those buildings?

A. None that I ever noticed.

Q. Have you since 1890 ever delivered any letters that you remember to either F. Van Reeth or F. Van Reeth & Co. at 19 and 21 West Fourth street, Cincinnati?

A. Not to him, individually, I have not.

Q. I mean letters addressed to F. Van Reeth and F. Van Reeth & Co.?

A. I have.

Q. What is the character of 19 West Fourth street, Cincinnati?

A. It is all right as far as I know.

Q. What I want to know is is No. 19 and 21 one business establishment, or is No. 19 one business establishment and 21 another?

A. 19 has always been used by Mr. Holland, a neighbor of Mr. Keck's, next door, a business concern.

Q. Is it a business house or a private house?

A. A business house.

Q. What is the character of business at No. 19?

A. A diamond-cutting establishment.

Q. And No. 21 is a diamond-cutting establishment, but they are separate houses?

A. No, sir; they are not.

Q. That is what I asked you. Are they one single building?

A. One single building.

Q. Do I understand you to say you have or have not delivered mail addressed to F. Van Reeth or F. Van Reeth & Co. at that place?

A. I have delivered it.

139 Q. But not to Mr. F. Van Reeth personally?

A. No, sir.

Q. Is that frequent or infrequent, letters to F. Van Reeth?

A. They are not very frequent.

Q. Are the letters addressed to 21 or 19?

A. At 19.

No cross-examination.

GEORGE W. CRITES sworn.

By Mr. BECK:

Q. What is your position?

A. Special agent of the Treasury Department.

Q. Located where?

A. Cincinnati, Ohio.

Q. Cincinnati is a port, although not upon the sea?

A. Yes, sir.

Q. Have you made an examination of the invoices filed in that port to see what quantity of diamonds have been imported through the port of Cincinnati since the first of the year by Herman Keck or Herman Keck & Co. or the Coeterman-Henrickson-Keck Diamond Company?

(Objected to. Objection sustained.)

Q. Do you know who F. Van Reeth is?
A. No, sir; I do not know him personally.

The district attorney offers in evidence the certificate of the secretary of state of Ohio, showing the incorporation of the Coeterman-Henrickson-Keck Diamond Company.

(Objected to.)

It is admitted that Herman Keck and F. Van Reeth are
140 connected with the company in question.

No cross-examination.

CHARLES B. HOLBROOK sworn.

By Mr. BECK:

Q. What is your position?
A. Permit clerk of the Philadelphia custom-house.
Q. Have you made an examination to see whether or not in the shipment of 563 diamonds by the steamship "Rhineland" any consular invoices were sent from either Liverpool or Antwerp?
A. I have not; but in my position as permit clerk the invoices would have to pass through my hands.
Q. As a matter of fact, have any invoices passed through your hands for this shipment of 563 diamonds?
A. They have not.
Q. Has any entry ever been made for those diamonds?
A. There has not.
Q. If there had been you would have known it?
A. I would have written the permit for their delivery.
Q. Just look at one package of those diamonds and say whether they are dutiable or not.

(Diamonds shown witness.)

A. I would state that the appraiser should be the judge of this.

By the COURT:

Q. Can you say?
A. I can. They are dutiable.

By Mr. BECK:

Q. What kind of diamonds are they?
A. Cut diamonds.
141 Q. What are they dutiable at?
A. 25 per cent.

Cross-examined.

By Mr. SHIELDS:

Q. It is a bad lot of stuff, is it not—cheap stuff? It is called yellow, is it not?
A. They are not first class.

Q. They are very poor, are they not?
A. What we call yellow.
Q. Very poor yellow at that, are they not?
A. Still they would be dutiable at 25 per cent.

The district attorney offers in evidence the record in case No. 2, 1896, United States against 563 Diamonds, showing the condemnation of these particular diamonds.

Which said record of said case # 2, United States against 563 Diamonds, is in words and figures as follows, to wit:

142 In the District Court of the United States for the Eastern District of Pennsylvania.

To the Honorable William Butler, judge of the district court of the United States for the eastern district of Pennsylvania:

Be it remembered that on this twenty-seventh day of February, A. D. 1896, before the Honorable William Butler, judge as aforesaid, comes Ellery P. Ingham, Esq., attorney of the United States for the eastern district of Pennsylvania, and, prosecuting in the name and on behalf of the United States and of all persons concerned, propounds and gives the said court to understand and be informed that on or about the 11th day of February, A. D. 1896, the collector of the port of Philadelphia, within the district aforesaid and within the jurisdiction of this court, did seize on board the steamship "Rhynland" certain goods, wares, and merchandise, to wit, five hundred and sixty-three diamonds (563), and the said collector now hath the same in his possession and custody as being forfeited to the United States for the causes of action hereinafter mentioned.

For that heretofore, to wit, on the 11th day of February, A. D. 1896, one Frank Loesewitz, being then and there master of the said steamship "Rhynland," did import and bring into the United States, to wit, into the port of Philadelphia, the said goods, wares, and merchandise, with intent in him to defraud the revenue of the United States, contrary to the form of the act of Congress in such case made and provided and against the peace and dignity of the

143 United States of America.

And for that heretofore, to wit, upon the said 11th day of February, A. D. 1896, the said Frank Loesewitz, master as aforesaid, knowingly, wilfully, and unlawfully, and with intent to defraud the revenue of the United States, did smuggle and clandestinely introduce into the United States, to wit, into the port of Philadelphia, the said goods, wares, and merchandise as aforesaid, without paying and accounting for the duty imposed upon the same by the provisions of the act of Congress in such case made and provided, which said goods, wares, and merchandise so smuggled and clandestinely introduced into the United States as aforesaid were subject to a duty by law and should have been then and there invoiced, the said Frank Loesewitz then and there well knowing that the duty due and payable upon the said goods, wares, and merchandise had not been paid and accounted for, and that the said goods, wares, and merchandise had not been invoiced as required by the provisions of

the act of Congress in such case made and provided, with intent to defraud the revenue of the United States, contrary to the form of the act of Congress in such case made and provided and against the peace and dignity of the United States of America.

And for that heretofore, to wit, upon the 11th day of February, A. D. 1896, the said Frank Loesewitz, master as aforesaid, knowingly, wilfully, and unlawfully, and with intent to defraud the revenue of the United States, did import and bring into the United States, to wit, into the port of Philadelphia, the said goods, wares, and merchandise contrary to law, in that due entry was not made of
144 the same by the said Frank Loesewitz, the said goods, wares, and merchandise being then and there, to wit, at the time of entry into the United States at the port of Philadelphia, concealed by the said Frank Loesewitz from the view and inspection of the officer of the United States duly appointed by law to examine the same, to wit, a custom-house inspector, and by subtle means and devices, to wit, by concealing the said goods, wares, and merchandise in a small box, the said Frank Loesewitz did not then and there particularize the contents of the said small box, and the said Frank Loesewitz did not then and there mention the said goods, wares, and merchandise to the said officer, contrary to the form of the act of Congress in such case made and provided and against the peace and dignity of the United States of America.

Wherefore the said attorney prays the advisement of the court in the premises and the appropriate process and monition, to the end that the said goods, wares, and merchandise may be and remain forfeited and the proceeds of the condemnation be distributed according to the provisions of the act of Congress in such case made and provided.

ELLERY P. INGHAM,
U. S. Attorney.

145 UNITED STATES, } ss:
Eastern District of Pennsylvania, }

The President of the United States to the marshal of the eastern district of Pennsylvania, Greeting:

You are hereby commanded forthwith to seize and attach the following goods, wares, and merchandise, to wit, 563 diamonds imported into the United States on the steamship "Rhynland" by Frank Loesewitz, master of the said steamship, as the same now are, and the same safely keep, to abide the final order and decree of the district court of the United States for the eastern district of Pennsylvania in a certain plea or information herein prosecuted against the said party, &c., by the United States of America, libellants, for forfeiture, &c.; and you are further commanded, in the name and by the authority aforesaid, to cite and admonish the said Frank Loesewitz, master of the said steamship, importer as aforesaid, and generally all others herein concerned, so that they be and appear at a special session of said court, to be holden at Philadelphia on the 13th day of March, A. D. 1896, at ten o'clock in the

forenoon of the same day, then and there to show cause, if any they have, why the said property, &c., should not be condemned as forfeited for the causes in said libel or information set forth; and have you then — there this writ.

Witness the Honorable William Butler, judge of the said [SEAL.] court, at Philadelphia, this 27th day of February, A. D. 1896, and in the 120th year of the Independence the United States.

CHARLES S. LINCOLN,
Clerk District Court United States.

[Endorsed:] No 2 of 1896. District court United States. The United States *vs.* 563 Diamonds Imported into the United States on the Steamship "Rhyneland" by Frank Loesewitz, Master of said Steamship. Attachment. Ret. March 13, 1896. Ellery P. Ingham, U. S. attorney.

146 UNITED STATES, }
Eastern District of Pennsylvania. }

A special district court of the United States will be holden in the city of Philadelphia on Friday, the 13th day of March, 1896, at 10 o'clock a. m., for the trial of a certain information against 563 diamonds imported into the United States in the steamship "Rhynland" for the causes in the libel filed against the same.

By order of the court:

CHARLES S. LINCOLN,
Clerk District Court U. S.

UNITED STATES, }
Eastern District of Pennsylvania, } *ss:*

William W. Craig, being duly sworn, says that a copy of the above notice was posted up in the most public manner at or near the place of trial, to wit, at the outer door of the United States court-room, in the city of Philadelphia, for upwards of fourteen days previous to the time of trial, to wit, from the 27th day of February, 1896, to the 13th day of March, 1896.

W. W. CRAIG.

Sworn and subscribed before me this 13th day of March, A. D. 1896.

CHARLES S. LINCOLN,
Clerk Dist. Court.

[Endorsed:] No. 2 of 1896. District court United States. United States *vs.* 563 Diamonds Imported into the United States in the Steamship "Rhynland." Affidavit of notice of hearing, &c. Filed March 13, 1896.

147 THE UNITED STATES OF AMERICA
vs.
563 DIAMONDS IMPORTED INTO THE UNITED STATES ON THE STEAMSHIP "RHYNLAND," ETC.
U. S. D. C.
Inf. for Forfeiture.
No. 2 of 1896.

And now, this 14th day of April, A. D. 1896, it is adjudged ordered, and decreed that the property, the subject of proceedings in this case, to wit, 563 diamonds imported into the United States on the steamship "Rhynland" by Frank Loesewitz, master of said steamship, be, and the same are hereby, condemned as forfeited for the causes in the said information set forth.

And it is further ordered that the property, the subject of proceedings in this case, be sold by the marshal in the manner and under the notice prescribed by law in cases of goods forfeited.

And, on like motion of the district attorney, order of appraisement of the said property, and Charles F. Gysi is appointed appraiser.

148 UNITED STATES,
Eastern District of Pennsylvania.

William Butler, judge of the district court of the United States for the eastern district of Pennsylvania, to Charles F. Gysi:

You are hereby commanded, in the name and by the authority of the United States, that five hundred and sixty-three diamonds imported into the United States, at the port of Philadelphia, in this district, in the steamship "Rhynland," now in the custody of the marshal, and libelled for forfeiture at the suit of the United States of America, you well and faithfully value and appraise; an indenture containing the true value thereof, under your hands and upon your respective oaths or affirmations, you make and return to me forthwith, at a session of this court now holding at the district court-room, in the city of Philadelphia, together with this writ.

Given under my hand and the seal of the said court, at Philadelphia, this fourteenth day of April, A. D. 1896, and in the one hundred and twentieth year of the Independence of the said United States.

[SEAL.]

W. W. CRAIG,
Clerk District Court U. S.

I, the subscriber, having been appointed appraiser to appraise the property, five hundred and sixty-three diamonds, named in this writ, do swear that I will faithfully and fairly appraise the same and make a true report of the value thereof according to the best of my understanding without unnecessary delay.

CHARLES F. GYSI.

Sworn and subscribed this 17th day of April, A. D. 1896.

CHARLES S. LINCOLN,
Clerk District Court.

[Endorsed:] No. 2. 1896. District court United States. The United States *vs.* 563 Diamonds Imported into the United States in the Steamship "Rhynland." Writ of appraisement.

149 To the Honorable William Butler, judge of the district court of the United States for the eastern district of Pennsylvania:

—; Charles F. Gysi, the subscriber, appointed by the court to appraise the property in the annexed writ described, having been first duly qualified, have in obedience to the said writ appraised the items of property therein mentioned, as the same are now in the custody of the marshal, at the sums placed opposite the same respectively in the following schedule and inventory, amounting in the aggregate to six thousand three hundred and six dollars and sixty cents ($6,306.60).

CHARLES F. GYSI, *Appraisers.*

PHILADELPHIA, 20 *Day of Ap*[illegible]*. D.* 1896.

Inventory and Appraisement of the Diamonds, the Subject of Proceedings in the Cause of Information for Forfeiture.

Five hundred and sixty-three diamonds, No. 2 of 1896, 225$\frac{15}{64}$ kts., appraised at value of $28.00 per kt., amounting to $6,306.60.

CHARLES F. GYSI, *Appraiser.*

150 UNITED STATES, } *sct:*
Eastern District of Pennsylvania, }

William Butler, judge of the district court of the United States in and for the eastern district of Pennsylvania, to the marshal of the same district, Greeting:

You are hereby commanded forthwith, in the name and by the authority of the United States, to sell five hundred and sixty-three diamonds, imported into the United States at the port of Philadelphia, in this district, in the steamer "Rhynland," now in your custody and possession, by virtue of a writ of attachment lately issued out of this court, at the suit of the United States, to the highest bidder at public auction, in the city of Philadelphia, first giving at least fifteen days' notice in one or more of the public newspapers of the said city, the same having been lately condemned as forfeited and ordered to be sold according to law, and the amount of the said sales you are to pay, within ten days thereafter, into the registry of this court, and how you shall have executed this writ do you make return to me on the eighth day of May, 1896, or on the next court day, together with this writ.

Given under my hand and the seal of the said district court, at Philadelphia, this fourteenth day of April, A. D. 1896, and [SEAL.] in the one hundred and 20th year of the Independence of the said United States.

W. W. CRAIG.
Pro Clerk District Court U. S.

[Endorsed:] No. 2, 1896. District court U. S. The United States *vs.* 563 Diamonds Imported into the United States in the

Steamship Rhynland. Writ of sale. Ret. May 8, 1896. James M. Beck, att'y for U. S.

151 In the District Court of the United States for the Eastern District of Pennsylvania.

THE UNITED STATES *vs.* 563 DIAMONDS IMPORTED, ETC. } Information for Forfeiture. No. 2 of 1896.

SIR: Please issue alias writ of sale as above, returnable *sec. leg.*

JAMES M. BECK,
U. S. Attorney.

To the clerk U. S. D. C., E. D. of Pa.

152 *Ellery P. Ingham.*

THE UNITED STATES OF AMERICA *vs.* 463 DIAMONDS IMPORTED INTO THE United States in the Steamship "Rhynland." } Information for Forfeiture. No. 2 of 1896.

1896, Feb. 27. Libel filed, process awarded, and Friday, March 13, 1894, appointed for time of hearing, of which the clerk to give notice.
" " 28. First proclamation made and no person appears.
" March 6. Second proclamation made and no person appears.
" " 13. Third proclamation made and no person appears.
" " " Affidavit of notice of hearing filed.
" April 10. Writ of attachment returned "attached."
" " 14. Decree of condemnation of the property and order of sale of same and writ of sale exit, returnable May 8, 1896.
Order of appraisement of diamonds, and Charles F. Gysi is appointed appraiser and writ exit.
" " 28. The appraiser returns writ of appraisement and report, which is filed.
" " 8. Writ of sale returned, "proceedings stayed."
" June 1. Præcipe for alias writ of sale filed by James M. Beck, Esq., attorney for the United States, and alias writ of sale exit, returnable June 19, 1896.

153 And the foregoing was all of the evidence offered by the plaintiff, The United States.

And thereupon the defendant, Herman Keck, by his counsel, moved the court for a binding instruction to instruct the jury to return a verdict of "not guilty;" which motion the court overruled, and to which ruling of the court defendant, Herman Keck, then and there excepted; which exception was duly allowed by the court.

The United States having rested its case as aforesaid, the defend-

ant, Herman Keck, and witnesses for the defendant, Herman Keck, were called and sworn and examined as follows, to wit:

154 *Defendant's Evidence.*

JOHN A. CALDWELL sworn.

By Mr. SHIELDS:

Q. You are the mayor of the city of Cincinnati?
A. I am.
Q. Do you know the defendant Keck?
A. I do.
Q. How long have you known him?
A. Some three or four years.
Q. Do you know other people who know him?
A. I do.
Q. Do you know his general character for honesty and fair dealing?
A. I think I do.
Q. What is his reputation there, good or bad?
A. Good.

Cross-examined.

By Mr. BECK:

Q. Have you had any business dealings with him?
A. I never had.
Q. Do you know Coeterman?
A. I do not.

LEOPOLD KLEIBOLIE sworn.

By Mr. SHIELDS:

Q. What is your business?
A. I am president of the Western German Bank of Cincinnati.
Q. How long have you known Mr. Keck?
A. I have known Mr. Keck for the last 11 or 12 years.
155 Q. Do you know many other people that know him?
A. Yes, sir.
Q. Do you know his general character for honesty and fair dealing?
A. Yes, sir.
Q. What is it, good or bad?
A. It is good; very good.
Q. Have you had business transactions with him and his firm?
A. I have always business transactions with him all along; I am his banker.

By the COURT:

Q. His reputation, you say, is good?
A. Yes, sir.

Cross-examined.

By Mr. BECK:

Q. Do you know who Coeterman is?
A. I never saw the man.
Q. Did you ever know of his being in Cincinnati?
A. I never knew he was in Cincinnati.
Q. Do you know who Henrickson is?
A. I know that the man or firm of Coeterman and Henrickson was in Cincinnati about a year and a half ago.
Q. Coeterman and Henrickson live abroad, do they not?
A. I think it is one and the same person.
Q. Coeterman and Henrickson are one and the same person?
A. I think so.
Q. They do not live in Cincinnati?
A. They do not live in Cincinnati.

By the COURT:

Q. Is the defendant a native of Cincinnati?
A. He is a native of Cincinnati. I knew his father well.

156 By Mr. SHIELDS:

Q. You have known the business concern also?
A. Yes, sir; I know it very intimately.

JACOB DORSE sworn.

By Mr. SHIELDS:

Q. What is your business?
A. Manufacturing jeweler.
Q. Where is your place of business?
A. On Race street, Cincinnati.
Q. How long have you been there?
A. I have manufactured there since 1889.
Q. Were you connected with any jewelers' association?
A. I am.
Q. What position?
A. Vice-president of the Manufacturing Jewelers' Association.
Q. Of the State?
A. The city.
Q. You are vice-president?
A. Yes, sir.
Q. Have you had business relations with this gentleman?
A. I have.
Q. You have known him and the firm for how long?
A. I have known him 12 years in business; I have known him almost since he was born.
Q. Do you know many people who know him?
A. Yes, sir.
Q. What is his general character for honesty and fair dealing?
A. Very good.

157 Cross-examined.

By Mr. BECK:

Q. Who is Coeterman?
A. I do not know him.
Q. Did you ever hear of his being in Cincinnati?
A. No, sir.
Q. Who is Henrickson?
A. I do not know him.

LEWIS HUMMEL sworn.

By Mr. SHIELDS:

Q. What is your business?
A. I am in the retail jewelry business.
Q. Where is your place of business?
A. Cincinnati.
Q. Have you had business relations with these gentlemen?
A. I have.
Q. You have bought goods from them?
A. I have.
Q. Do you know the class of goods his firm deals in?
A. I know of them.
Q. Were you an officer of any association?
A. I was several years ago?
Q. That he was connected with?
A. Not that he was connected with.
Q. He was in business, was he, at the time, and you have known him and had business relations with him?
A. I have.
Q. Do you know other people who know him?
A. I do.
158 Q. Do you know his general character for honesty and fair dealing?
A. I do.
Q. Is it good or bad?
A. It is good.

No cross-examination.

EDWARD G. LOMIRE sworn.

By Mr. SHIELDS:

Q. What is your business?
A. Retail jeweler.
Q. How long have you known the defendant, Mr. Keck?
A. I have known Mr. Keck for ten or twelve years, but the firm and his father, I suppose, 23 years.
Q. Do you know many other people who know him?
A. Yes, sir.
Q. Do you know his general character for honesty and fair dealing; is it good or bad?

A. Very good.
Q. Did you ever hear it questioned?
A. No, sir.

No cross-examination.

HERMAN H. LIPPE sworn.

By Mr. SHIELDS:

Q. What is your business?
A. Retail jewelry business in Cincinnati.
Q. How long have you known the defendant?
A. Since he was a boy.
Q. You knew his firm?
A. I knew his father well.
159 Q. Do you know other people who know him?
A. Yes, sir; a great many people.
Q. Do you know his general character for honesty and fair dealing?
A. Yes, sir; it is very good.

Cross-examined.

By Mr. NEWITT:

Q. Do you know Coeterman?
A. No, sir.
Q. Or Henrickson?
A. I do not.

By Mr. SHIELDS:

Q. You were president of the State Jewelers' Association, were you not?
A. Yes, sir; for two terms.
Q. During the time that he was in business?
A. Yes, sir.

Adjourned until May 28th, 1896, at 10 a. m.

160 U. S. D. C., E. D. of Pa.

Butler, J.

UNITED STATES
vs.
HERMAN KECK.

THURSDAY, *May* 28, 1896.

Present: Messrs. Newitt and Beck, for the Government; Messrs. James, Bode and Shields, for defendant.

CONSTANT VAN REETH, having been duly sworn, was examined as follows:

By Mr. SHIELDS:

Q. How old are you?

A. Twenty-four years of age.
Q. What is your father's name?
A. Franz Von Reeth.
Q. Where is your home?
A. In Antwerp.
Q. You have lived there how many years?
A. All my life.
Q. Where did your father live?
A. In Antwerp, too.
Q. He lived there all your life?
A. Yes, sir.
Q. You have lived there together, have you?
A. Yes, sir.
Q. When did your father leave Antwerp?
A. The 9th of March, 1895.
Q. What was his business in Antwerp?
161 A. Diamond-polisher.
Q. How long had he been engaged in that business—as long as you remember?
A. Yes, sir.
Q. What did he come to this country for?
A. To polish diamonds.
Q. Was his name mentioned in the papers at the time he left?

(Objected to.)

Mr. SHIELDS: I offer to prove that at least one year and during a period of one year prior to the 27th day of January, 1896, the name of F. Van Reeth frequently appeared in the public prints of Antwerp, referred to by Captain Loesewitz in his testimony, and that it was well known through the public prints and by the knowledge that the people of Antwerp had that Mr. F. Van Reeth went to Cincinnati to engage in the diamond business.

(Objected to. Objection sustained. Exception allowed for defendant.)

Q. Did you see Mr. Keck in Antwerp in January of 1895?
A. Yes, sir.
Q. Had you any communication with or from him prior to seeing him in Antwerp?
A. I saw Mr. Keck in Antwerp.
Q. Did you have any letter or communication from him prior to that time?
A. Yes, sir.
Q. Where from?
A. From Hanau, Germany.
Q. Do you know where he was on the 27th day of January, in the afternoon?
A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. Of your own personal knowledge, what knowledge have you as to where he was on January 27th?

162 A. I was with Mr. Keck on the afternoon of January 27th.

By Mr. SHIELDS:

Q. Where were you that afternoon and what was he doing?

A. I was with Mr. Keck in the office of Mr. Coeterman.

Q. And Mr. Coeterman is the same Coeterman whose name is used in this corporation in Cincinnati?

A. Yes, sir.

Q. What was he doing there?

A. He was talking with Mr. Coeterman and with me.

Q. How long were you there that afternoon?

A. From three o'clock until five o'clock or half past five.

Q. Explain to the court and jury how you fix that date.

A. Because I received a letter from Mr. Keck on the 26th of January, on Sunday morning, to come on Sunday evening at six o'clock to the Hotel Labriere. I went there. On the 26th of January of this year I received, on Sunday morning, a letter from Mr. Keck. He asked me to meet him in the evening at six o'clock in the Hotel Labriere in Antwerp. At six o'clock I went there and saw Mr. Keck there. I was with Mr. Keck. Then we went to several bars and played billiards until twelve o'clock. I left Mr. Keck. Then he asked me to meet him on the next day, on the 26th of January. He told me to come at three o'clock in the afternoon in the office of Mr. Coeterman. On Monday at three o'clock I went to the office of Mr. Coeterman, where I found Mr. Coeterman and Mr. Keck.

Q. From the time you went into Coeterman's place until you went out, was Mr. Keck out of that place?

A. No, sir.

Q. Was he in the Café Alsacienne at all during that time?

A. I do not know. He has always been with me.

163 Q. Afterwards you came to America with him, did you?

A. Yes, sir.

Q. Did you bring anything with you or did he?

A. No, sir.

Q. In the way of diamonds or any articles in any way, shape, or form?

A. No, sir.

Q. What was the paper that you had? Explain that to the jury.

A. There was a paper that had nothing else except diamonds cut in all the world.

Q. Was there anything dutiable about it or anything wrong about it?

A. No; there was a price-list in Amsterdam.

Q. When you came to New York was your baggage searched and Mr. Keck's? Were you there when his baggage was searched?

A. Yes, sir; we were on the same steamer.

Cross-examination.

By the DISTRICT ATTORNEY:

Q. What was your position at the time that you left Antwerp?

A. Diamond-polisher.
Q. For whom?
A. For Mr. Van Boone.
Q. Who is he?
A. He is a diamond-polisher in Antwerp.
Q. Is he connected with this Mr. Coeterman?
A. Yes, sir.
Q. How is he connected with Coeterman?
A. He is a workman with Mr. Coeterman.
Q. Then you are connected with Mr. Coeterman as a diamond-polisher and not with Mr. Van Bome?
A. Mr. Van Bome was a master.
164 Q. Mr. Van Bome was simply an employé of Coeterman, like yourself?
A. Yes, sir.
Q. And Coeterman is a member of the firm of the Coeterman-Henickson-Keck Company in Cincinnati?
A. Yes, sir.
Q. He lives where?
A. In Antwerp.
Q. His business there is a diamond exporter?
A. Diamond merchant.
Q. He sells diamonds at wholesale and retail? Does he sell simply one single stone in a ring, or does he sell one hundred diamonds at a time?
A. He will sell one stone and more if he can.
Q. Or he would sell one hundred?
A. Yes, sir.
Q. He sells them, not merely set in rings, but he sells them also in the rough?
A. When they are polished he sells them.
Q. They are not set in a condition to wear, but they are polished diamonds sent to America to be set in rings and used that he sells?
A. They polish them and sell them.
Q. They are not set into any setting when he sells them?
A. No, sir.
Q. Have you that letter that you state that Mr. Keck wrote you, that you received on Sunday?
A. No; because I never thought it would be useful to me.
Q. When did you last see that letter?
A. On the same day; on the 26th of January.
Q. You have not seen it since?
A. Oh, no, because I thought I could not use it, and I put it away, and on the 3d of February I left Antwerp.
165 Q. And left the letter there?
A. Yes, sir.
Q. Have you written for that letter?
A. No, sir.
Q. On the 27th you say that this letter stated that you were to meet Mr. Keck at Coeterman's?
A. No; that letter say- I must meet Mr. Keck on the 26th.

Q. Then you made the engagement with him to meet at Coeterman's at three o'clock?

A. Yes, sir.

Q. Keck had business at Coeterman's, did he not?

A. I think it is the same firm.

Q. How long had he been in Antwerp?

A. He had left Antwerp two times.

Q. At that particular time how long had he been in Antwerp, if you know?

A. I do not understand that.

Q. How long had Mr. Keck been in the city of Antwerp when you saw him, as you say, on the 27th inst.?

A. I saw him the first on the 19th of January.

Q. From the 19th of January until the 27th of January he was in Antwerp in connection with business with the Coeterman Company?

A. Yes, sir.

Q. I suppose he was there every day.

A. No, sir; because he had left Antwerp once to go to Hanau.

Q. When he was in Antwerp his headquarters was his business partner's, Coeterman's?

A. He went there; yes, sir.

Q. It was no uncommon thing that he should be at Coeterman's, was it? Whenever he is at Antwerp he makes his business place at Coeterman's, does he not?

166 A. He goes to Coeterman's?

Q. He goes to Coeterman's and transacts his business at Coeterman's when he is in Antwerp?

A. Yes, sir.

Q. Are you prepared to swear to this jury that when you entered Coeterman's that day you took out your watch and noted the time?

A. I didn't take out my watch, but when Mr. Keck asked me to come there at three o'clock, then I called there at three o'clock.

Q. The only reason why you think you were at Coeterman's on Monday at three o'clock was because on the day before he had asked you to be there at three o'clock?

A. Yes, sir.

Q. You did not look at your watch when you entered Coeterman's to see whether it was three o'clock?

A. No. If there is anybody says to me I must come at three o'clock I go at three o'clock.

Q. You do not remember, other than the inference that you think you kept the engagement, that it was three o'clock?

A. Yes, sir.

Q. Did you look at any clock or watch?

A. No, sir.

Q. Or in any way determine whether it was exactly three o'clock when you entered Coeterman's?

A. I do not remember, but I think I left my house a quarter before three o'clock, and then I would be there at three o'clock. I think I looked at my watch before I left my house.

Q. You say you think you looked at your watch before you left your house?

A. Yes, sir.

Q. Are you positive of that, and are you prepared to swear that you looked at your watch?

167 A. Yes, sir.

Q. You are prepared to swear to that positively?

A. Yes, sir.

Q. Why should you remember at this date that you looked at your watch at quarter of three?

A. Because to see what time it was; if it was not time to go to the office.

Q. Was there any special reason why you should look at your watch other than the fact that you were going to be at Coeterman's at three o'clock?

A. Yes, sir; because when they ask me to come at three o'clock I am always on time.

Q. Where had you been prior to going to Coeterman's?

A. At my house.

Q. How long had you been there?

A. From noon.

Q. Had you seen Mr. Keck that day before you saw him at Coeterman's?

A. No, sir.

Q. When you got to Coeterman'- was Keck there?

A. Yes, sir.

Q. How long did you remain there?

A. Until five o'clock or half past five o'clock.

Q. Why do you say to five o'clock or half past five? Did you look at any watch or clock to determine what time it was that you left?

A. No, sir.

Q. What were you doing while you were there?

A. I spoke with Mr. Keck and was reading a newspaper.

Q. How long were you talking to Mr. Keck?

A. A few minutes; read a little and talked a few minutes. I speak more than once with him.

Q. You were reading a newspaper?

A. Yes, sir.

168 Q. And he was attending to his business matters with Coeterman?

A. Yes, sir.

Q. While you were reading the newspaper he could have left that place and returned?

A. No, sir; it was one room.

Q. You were interested in your newspaper, were you not?

A. Not so long. I didn't read so long. I stop always, because when I read too long my eyes hurt.

Q. Had you any special reason for observing whether Mr. Keck left that place on that day and returned?

A. I do not understand that.

Q. Had you any special reason for seeing whether or not Mr. Keck left that place while you were there and returned?

A. I did not see him go out.

Q. Had you any reason for watching Mr. Keck's movements that day?

A. I do not understand the question.

Q. Had you any reason whatever for watching Mr. Keck's movements?

A. What reason I have for seeing Mr. Keck was always there?

Q. I ask you whether there was any reason on that day for your watching Mr. Keck and seeing whether he left the office or not.

A. I cannot answer, because I do not understand it.

Q. When you came there at three o'clock your only purpose was to see Mr. Keck for a few minutes, I understood you to say.

A. I didn't say that.

Q. What is the fact?

A. I say I spoke now a few minutes with Mr. Keck and then a few minutes. I spoke more than once with Mr. Keck.

Q. What was the purpose of Mr. Keck asking you to come there at three o'clock?

169 A. Because every time when he came to Antwerp and he was there I went every day to the office of Mr. Coeterman.

Q. What was the reason for your meeting Mr. Keck at three o'clock at Coeterman's business place?

A. To see him.

Q. Why did you want to see him—you had your work to do?

A. No; at that time I had no work.

Q. What were you going to see him about?

A. To speak with him.

Q. To speak with him on business?

A. As friendship.

Q. Only with friendship?

A. Friendship and about my father over in America.

Q. That was inquiries how your father was getting along, or was it about your father's business?

A. About my father's health and all things.

Q. As a son, you wanted to inquire how your father was getting along in Cincinnati?

A. Yes, sir.

Q. Therefore it is a fact, is it not, that the only purpose you had in seeing Keck was simply, as you say, for friendship, to have a chat with him?

A. Yes, sir.

Q. There was no reason for your meeting Keck at Coeterman's?

A. Yes, sir; for a few things I must send to America.

Q. What were the few things you were going to send to America?

A. Plates to polish diamonds.

Q. Implements to polish diamonds?

A. Yes, sir.

Q. When you got there at three o'clock, did you talk about these plates?

A. Yes, sir.

170 Q. When you had talked about the plates, which took a few minutes, you had then finished your business with Mr. Keck; is not that so?

A. No; then there was a thing that I could not understand what Mr. Keck would say. He asked me the rate of wages and I could not understand what it was.

Q. You asked him about the wages?

A. Yes, sir.

Q. When that was settled your business with Mr. Keck was over, was it not; your business was done with Mr. Keck.

A. At that time; yes, sir.

Q. After that you had no reason to *say* see what Keck did, had you?

A. No.

Q. Did you not say on the deck when the "Aller" came in that you could not speak the English language?

A. When I came in in New York?

Q. Yes.

A. I said I could speak a little.

Q. When you were questioned by the custom-house inspectors did you not refuse to answer because you could not understand the English language?

A. No, sir; I have never refused to answer. I have always explained as much as I could in English.

Q. Do I understand you to say you did not claim to the inspectors that you could not talk English?

A. I spoke a few words at that time.

Q. Did you tell the inspectors that you could not talk English?

A. No; I didn't say I could speak English.

Q. I ask you whether you told the inspectors that you could not talk English.

A. I said I could speak a little.

Q. What language did you speak to Mr. Hess, this gentle-

171 man here? You saw him on the dock?

A. Yes, sir.

Q. What language did you speak to him?

A. English, Flemish, and French; whatever I could do to make him understand.

Q. Did you talk German to him?

A. No, sir; because I can't talk German.

Q. You did not talk German to Mr. Hess?

A. No, sir; I can't talk German.

Q. Is Coeterman here?

A. No, sir.

Q. When was it that the "Aller" sailed from Southampton?

A. On the 5th of February.

Q. You know Von Hemmelrich very well?

A. I know him by sight.

Q. You know he is a diamond merchant in Antwerp?

A. Yes, sir.

Q. How many times have you seen Mr. Keck and Von Hemmel rich together?
A. Never.
Q. All the time Mr. Keck had been in Antwerp you never saw Keck and Von Hemmelrich together?
A. No, sir.
Q. Do you know whether Keck and Von Hemmelrich know each other?
A. I do not know.
Q. Have you been here ever since you came?
A. Since the 14th of February.
Q. You are engaged by this company in Cincinnati?
A. Yes, sir; with my father.

The COURT: Has he said how it is that he knows that this
172 was the 27th of the month? He says that he was there frequently; that was a favorite resort. How does he identify the fact that he met Keck on the 27th? How does he fix that day?

By the DISTRICT ATTORNEY:

Q. How do you fix that date, his honor asks, that it was the 27th of January when you met Mr. Keck at that place?
A. On the 26th of January, on Sunday morning, I received a letter from Mr. Keck that was written in Hanau, Germany.
Q. How do you know it was the 26th?
A. Because it was written on the letter.
Q. How do you happen to remember the particular fact that that letter was the 26th, when you say that from the time you received the letter you did not think it of any importance?
A. Because I saw the date that was on the letter.
Q. How do you happen to remember the date that was on that letter, which you did not think important enough to keep for twenty-four hours?
A. Because it was a week before I left Antwerp.
Q. At the time you received this letter there was nothing in the letter that attracted your attention?
A. Yes, sir.
Q. Had you any special reason for noticing the date of that letter?
A. Because it was just a Sunday between. The 19th of January I saw Mr. Keck for the first time in Antwerp. The second Sunday I received the letter to meet him in the evening, and on the Monday week after I left Antwerp.
Q. This letter you did not think — enough importance to keep on that day; it was simply a note to meet you that night, was it not?
A. Yes, sir.
Q. You did not think it — enough importance to keep?
173 A. No, sir.
Q. Is it not a fact that the reason why you think that letter

was written on Sunday was that after Mr. Keck was arrested you commenced to think back and fixed on the day you received it on?

A. Say that again. I can't understand it.

Redirect examination.

By Mr. SHIELDS:

Q. Have you been in this country since your arrival in Cincinnati all the time?

A. Yes, sir.

Q. You have taken out your first citizen's paper—your declaration of intentions to become an American citizen?

(Objected to. Objection sustained.)

FRANZ VAN REETH, having been duly sworn, was examined as follows:

By Mr. SHIELDS:

Q. How old are you?

A. Forty-six years of age.

Q. Where do you reside?

A. Antwerp or in Cincinnati.

Q. Where do you live now?

A. Cincinnati.

Q. How long have you been in Cincinnati?

A. Fourteen months.

Q. What did you come over here for?

A. To cut diamonds.

Q. Have you been engaged in that business since? Have you been working at it since? Are you manager for the firm?

A. I don't understand you.

174 Q. Have you been cutting diamonds all the time?

A. Yes, sir.

Q. Did you know Captain Loesewitz?

A. Yes, sir.

Q. How long have you known him?

A. Twelve years, I think.

Q. Where have you seen him?

A. In Antwerp.

Q. Whereabouts in Antwerp?

A. In the cafés.

Q. Are any of your friends acquainted—good friends meet with him and you?

A. I do not understand you.

Q. What were you engaged in in Antwerp before you came to this country?

A. Cutting diamonds.

Q. Had your name been in the papers?

A. Yes, sir.

Q. Had you received medals?

The COURT: We will not go into that.

By Mr. SHIELDS:

Q. What big stone did you cut?

The COURT: We will not go into that.

By Mr. SHIELDS:

Q. Are you the father of the last witness?
A. Yes, sir.
Q. Did you have any talk with Mr. Keck at any time about bringing diamonds, smuggling diamonds, or anything of that kind into this country?
A. No, sir.
Q. Did you know that he was going to do so or was going
175 to attempt to do so, or have any knowledge of it?
A. No, sir.
Q. What kind of stones are imported by your firm, cut diamonds or rough?
A. Rough.
Q. What do you do with the rough?

(Objected to.)

Mr. SHIELDS: My purpose is to show that they deal wholly in rough diamonds, that they cannot make any use of the cut diamonds in their business and to follow that up by the people who handle their goods and the people who have seen them; that they never have any of this kind of material in their place at all, so as to show there was no motive on the part of these gentlemen to smuggle this stuff in.

(Objected to. Objection sustained. Exception allowed for def't.)

Cross-examination.

By the DISTRICT ATTORNEY:

Q. What position do you hold with this Coeterman-Henrickson-Keck Company? What do you do for them?
A. Diamond-cutter.
Q. How much do you receive or what wages or moneys do you get from this company for the work that you do?
A. A third of the profits.
Q. What is the firm of Van Reeth & Company? Is there any firm known as Van Reeth & Company?
A. No, sir.
Q. Did you ever hear of a firm of Van Reeth & Company?
A. No, sir.
Q. How did you come to go to America? Who brought you here? Who wrote you to come here to work with this company?
176 A. I understand it, but I can't explain it in English.

By the COURT:

Q. Why did you come to this country?
A. I can't explain it in English.

By the DISTRICT ATTORNEY:

Q. Who asked you to come to this country?
A. Coeterman asked me to come to the country.
Q. Did not Keck ask you to come to this country?
A. No.
Q. How many times has Keck been in Antwerp?
A. No; I don't know.
Q. Many times?
A. I don't know.
Q. How many times have you seen him?
A. Two or three times.
Q. Do you know Van Hemmelrich?
A. Yes, sir.
Q. You did come to this country on an agreement to work for this Cincinnati firm at Coeterman's works; is that right?
A. I don't understand.
Q. Did you come to this country looking for work, or did you come because you were promised work with this particular firm?
A. I was promised work.
Q. You know Von Hemmelrich?
A. Yes, sir.
Q. How many times do you think you have seen Von Hemmelrich and Keck together?
A. Never.
Q. You never saw them together?
A. No, sir.
177 Q. Although Keck has been in Antwerp buying diamonds, and Von Hemmelrich is a diamond dealer, you never saw them together?
A. No, sir; I never saw them together.
Q. You saw them in your shop?
A. I never saw them together.
Q. How many diamond dealers are there in Antwerp?
A. Jewelers and dealers?
Q. Yes.
A. Three or four hundred.
Q. How many years has Von Hemmelrich been there?
A. Von Hemmelrich is a jeweler.
Q. How many years has he been in Antwerp?
A. I think he was born in Antwerp.
Q. He has been there all his life?
A. I think so.
Q. How many years has Coeterman been there?
A. I think he was born there.
Q. Von Hemmelrich is employed by Coeterman, is he not?
A. No, sir.

Q. Was he not?
A. I do not think so.
Q. Have you not seen Von Hemmelrich in Coeterman's place?
A. Yes, sir.
Q. Many times?
A. No, sir.
Q. You have seen him there?
A. Yes, sir.
Q. Engaged in business with Coeterman?
A. No; not the same business.
Q. He came there to talk business with Coeterman?
178 A. To buy diamonds, I think.

By Mr. SHIELDS:

Q. Von Hemmelrich is a retail man, is he not? He is a retail dealer, not wholesale, opposite the Hotel St. Antoine?
A. Yes, sir.
Q. He sells to the people in the hotel?
A. Yes, sir.
Q. That is the kind of business Von Hemmelrich's is?
A. Yes, sir; a jewelry store.

By the DISTRICT ATTORNEY:

Q. Do I understand you to say that the Coeterman-Henrickson-Keck Company do not import cut stones?
A. Rough stones.
Q. Do they not also import cut stones?
A. I do not know.
Q. Do they not polish the stones that have been cut in Antwerp?
A. Yes, sir; in Antwerp.
Q. They import into this country cut stones and polish them here?
A. I do not know. I think not.
Q. How about the firm of Herman Keck Manufacturing Company and the Herman Keck Company, in the same building—do they import cut stones?
A. No, sir; rough stones.

HERMAN KECK, having been duly sworn, was examined as follows:

By Mr. SHIELDS:

Q. How old are you?
A. Thirty-one years old.
Q. Where were you born?
179 A. In Cincinnati.
Q. Whom did you live there with?
A. I lived with my parents.
Q. When did your father die?
A. My father died four years ago.
Q. What business was he engaged in?

A. Manufacturing jeweler.
Q. How long had he been engaged in that business?
A. He had been in that business since the early sixties.
Q. Who succeeded to the business upon his death?
A. We incorporated in 1890.
Q. Was that during your father's lifetime?
A. That was during my father's lifetime.
Q. And the name of that incorporation was what?
A. The Herman Keck Manufacturing Company.
Q. Have you carried on the business after his death?
A. Yes, sir.
Q. You and your brother and your sister?
A. Yes, sir.
Q. You have been carrying on the business?
A. Yes, sir.
Q. And are still engaged in it?
A. We are.
Q. What is the Coeterman-Henricksen-Keck Company? When was that organized?
A. That was organized last May—that is, May, 1895.
Q. What was the business of that concern?
A. The business of the concern was to cut diamonds.
Q. Who composed it? It was organized in the State of Ohio, was it, as appears by the papers?
180 A. It was organized in Ohio, and I managed to get Mr. Coeterman, of Antwerp, interested by putting in some money Mr. Van Reeth and Mr. Coeterman over there *and* put in some money and some Cincinnati parties put in some money.
Q. And that firm was created for the purpose of doing what?
A. For the purpose of cutting diamonds.
Q. Where did you get the diamonds to cut? In what form did you get them to cut?
A. Diamonds in the rough.
Q. Have you imported any cut diamonds at all for this firm?
A. No, sir.
Q. Or for your own firm?
A. For the Herman Keck Manufacturing Company I have.
Q. How long ago?
A. Some time in February.
Q. What were they?
A. Small goods.
Q. Some small ones that you could not cut?

The COURT: We will not go into this. The Government is bound to prove that these special diamonds were smuggled, and the character of the business pursued by these different firms has nothing whatever to do with it.

By Mr. SHIELDS:

Q. When did you go to Antwerp on this last trip?
A. I went to Antwerp in January of this year.

Q. What did you go for?
A. I went to buy rough for the Coeterman-Henrickson-Keck Diamond Cutting Company.
Q. Give to the court and jury what you did, where you went to on that trip, as nearly as you can.
181 A. I had advices from Mr. Coeterman that he expected to buy a large quantity of rough some time in January, and he thought it would be advisable for me to come on and see what kind of rough would be best suited for our American trade. He knows nothing about what would suit our American trade.

The COURT: There is no advantage in going into the business.

Q. You went there to buy diamonds in the rough?
A. Yes, sir. On the 27th day of January the Antwerp syndicate parceled out amongst themselves a lot of rough in the morning. He asked me to be there about two o'clock. I had previously been in Antwerp and made a short trip to Germany. I got back on Sunday night and had written a letter to Constant Van Reeth, asking him to meet me at the Hotel Labriere, which he did. I did this, as he was to hunt up and get me some castings. I had written him from Hanau, Germany.

By Mr. SHIELDS:

Q. When did you meet him?
A. He met me at the Hotel Labriere some time after six o'clock Sunday evening.
Q. What day of the month was that?
A. That was on the 26th day of January. That evening we went to a variety show, and played a few games of billiards. It was about twelve o'clock before he left, and then I told him to be sure to be at Coeterman's office at three o'clock the next day so that we could get these matters arranged about these scouring stones, laps, &c., and we would try and leave for America as soon as possible. I was anxious to get home.
Q. You went there to do your business with the Coeterman's?
A. Yes, sir.
Q. And to get this stuff and material in Antwerp?
182 A. Yes, sir.
Q. Did he meet you at three o'clock?
A. He was there promptly at three.
Q. How long had you been there before he got there?
A. I got there about two o'clock.
Q. How long did you remain there?
A. We remained there until after five.
Q. From there where did you go?
A. From there we went to the Hotel Labriere.
Q. How long did you remain there?
A. I remained there the balance of the evening, as I had some letters to write and some figuring that I wished to do.
Q. You have heard what the captain said. He was under the

impression that you are the man who gave him this package. Did you see him at all on that day?

A. No, sir.

Q. Is there any truth about you receiving the package or being there when a package was delivered, or anything of that kind?

A. The captain must be mistaken.

Q. You are not the man?

A. I am not the man.

Q. When did you leave Antwerp for America?

A. We left the next Monday night, February 3d.

Q. What time did you sail and on what ship?

A. We sailed on February 5th, on the steamer "Aller."

Q. From what place?

A. From Southampton.

Q. That is the reason you left Antwerp Monday?

A. Yes, sir; in order to be there.

Q. You came over and what was done? You were searched
183 as has been said?

A. We landed in New York Friday night.

Q. Tell the story.

A. The steamer got in rather late and the ship's officers refused to give us any definite answer whether we would be able to land that night or not. At the last moment, it seems, a tug came aboard with regular customs officers and that settled that we would be able to land. We hurried down into the room to make our declarations and I made mine and Mr. Van Reeth made his. I then went back to my cabin to see that my baggage was in shape to be landed.

Q. Did anything occur in the cabin while you were there making your declaration?

A. There were some people came around and as I was making my declarations they seemed to look over me.

Q. Looked over what you were doing?

A. Yes, sir.

Q. Up to that time had you seen anybody in reference to this matter or know anything about it? Did you know anything about it at the time?

A. No, sir.

Q. Had anybody spoken to you?

A. No, sir.

Q. After signing the declaration you went to your room?

A. Yes, sir; as I came out of my room a party, who I now recognize as Mr. Gallen, came up to me and said, "Are you Mr. Keck?" I told him, "Yes." "Mr. Keck, of Cincinnati?" I told him, "Yes." "A friend of mine, Captain Loesewitz, has got a little package he asked me to deliver you," and he pulled it out and held it
184 around in his hand. I said, "Captain Loesewitz, I know no man by that name." He says, "I guess I must be mistaken, but he asked me, I being a friend of his, to be careful specially and see you at once when the steamer got in." So I thought nothing more about it. After we got our baggage landed I was surrounded by a number of men and they said they would look through my

baggage. I told them, "All right; nothing to suit me better." They took my one satchel in which I generally kept my old laundry, and there were quite a lot of people on deck, and they threw it out right and left before the people. I objected; I said, "If you are going to examine so closely, can't you take it in a room? It is embarrassing for me to stand before all these people." They gave me no answer. I said nothing more. The party who was examining said, "Mr. Commissioner;" after he got through—he was a little, fat man and had to bend over—he said, "Mr. Commissioner, I am not used to this work. Can't we take the other satchel in on the table?" He said, "Yes." They took the other satchel in on the table. As he got in the room he said, "Mr. Commissioner, you remember we heard some years ago of a party smuggling diamonds in soap. I remember seeing a piece of soap in there. Hadn't we better go in and get it?" He said, "By all means go and get it." He went in and he took the piece of soap out and it was wrapped in a piece of paper and it had got dry and it crumbled all to pieces; then they got the other satchel. I had two little pieces of bort, which is a kind of a black diamond, which is much harder than the ordinary diamond and which is used in the work.

Q. It was what the officer mistook for rough diamonds?

A. It don't look like rough diamond; it was bort.

Q. Such as is used in manufacturing and is admitted free?

185 A. Yes, sir. I had a number of letters there from my wife, my brother, and other parties and a few bills. They got through and I said, "Gentlemen, are you satisfied?" They said, "Not exactly. We will have to take you back to the cabin and see if you haven't got diamonds about you." I told them, "All right." So two of the gentlemen went back with me and looked through my pockets, through my vest, and asked me if I had a bandage, and one looked under my tie to see if I had a diamond on. I did not have any. They said, "It is all nonsense for you to deny you have no diamonds; we know you have some." I said, "Gentlemen, look and if you find them I am satisfied. I have not a diamond about me." One gentleman said, "It is strange that you as a diamond merchant never wear diamonds." I told them, "I am not in the habit of wearing diamonds; I never do." We went back to the room and before I was going to pack up my traps that lay about the table one of the gentlemen says, "We will keep this satchel." I said, "What for?" He said, "We want these papers." I said, "I don't see what you want with those papers. Those are letters from my wife." I said, "By what right can you hold these?" That was Mr. Cummings, and he snickered and said, "We have got them and we are going to keep them. What are you going to do about it?"

The COURT: Come to the question of whether they found any diamonds on you or dutiable property.

A. They found no diamonds or dutiable property.

Q. Or nothing that they claimed to be such?

A. No, sir; nothing whatever.

By Mr. SHIELDS:

Q. Then did they ask you to come with them to Philadelphia? Explain that.

186 A. I told them, "Can't I see Mr. Van Reeth?" They said, "No; you cannot talk to him. We will take him down to Ellis island." I told them that was nice. One gentleman came up and says to me, "We think you have been smuggling diamonds in Philadelphia, and we will ask you to go down there. Are you willing to?" I told him I didn't see why. He said, "We want you to be identified by Captain Loesewitz." I told them all right. Then I wanted to take my baggage again.

Q. You did subsequently come over to Philadelphia, did you not?

A. I was going to, but because they would not let young Van Reeth come along, or let me give him directions as to what he would do, he being a stranger there, I said, "I cannot go."

Q. You did afterwards come to Philadelphia?

A. Yes, sir.

Q. There has been a question asked about your attorney, Mr. Jones, from Cincinnati, meeting you on the wharf. Had you any arrangement or any knowledge that he was going to be there on the wharf at that time?

A. None whatever.

Q. What was he doing in New York on your behalf at that time?

A. He was attending to some legal business for me.

Q. And had been there for some time, had he not?

A. Yes, sir; so he told me.

Q. Were you with Van Himmelrich or did you have any business with him on that day mentioned at all?

A. No, sir.

Q. Was he a customer in any way, shape, or form of yours, or you of his?

A. No, sir.

Q. Did you ever have any business dealings with him or know him?

187 A. Not a cent. I only met him a few times in the many that I went over there. I met him a few times at the office of Mr. Peterman.

Q. How many years had you been going over there?

A. About nine years.

Q. How often a year?

A. Two and three times a year.

Q. Was there ever a suspicion cast upon you prior to this?

(Objected to.)

Q. Have you ever been accused of smuggling?

A. No, sir.

Q. At any time?

A. No, sir.

Q. Or has your firm ever been accused of smuggling?

A. No, sir.

Q. Or anybody connected with your business affairs or concerns, directly or indirectly?

A. No, sir; nobody.

Q. There has been an allegation here by the officer, Mr. Gallen, that you said that that box had no address upon it when you were on the wharf. How did you know that?

A. He put the box plainly in front of me twice. He showed me the box plainly twice. I had seen the box.

Q. You had seen it on the boat?

A. Yes, sir.

Q. What was the effort made; to get you to take it when you were on the boat?

A. He seemed to make an effort; yes, sir.

Q. Were you in the Café Alsation at all on that 27th?

A. No, sir.

Q. It has been stated by the officer that you said you
188 might have been. Their idea was you were in the Victoria, was it not?

A. They mentioned something like Victoria, but I don't know any Victoria there.

Cross-examination.

By the DISTRICT ATTORNEY:

Q. If you remember so positively that you were not in Café Alsacienne on January 27th, why did you answer the officers that you might have been in the Café Alsacienne on that day?

A. He did not mention on the 27th. He mentioned, "Have you ever been in the Café Alsacienne?" I told him I knew no such café.

Q. You said you knew no such café?

A. Yes, sir.

Q. How many times had you been in Antwerp?

A. I have been going there for nine years.

Q. How many times have you been there?

A. Over twenty times.

Q. How many weeks have you been at one time in Antwerp?

A. I go to Antwerp and Amsterdam and Germany. I generally stay a few days.

Q. Sometimes you stay weeks at Antwerp, do you not?

A. Not unless my business requires it.

Q. Your business does require it at times?

A. No, sir; I never stay weeks there.

Q. Why did you say "not unless your business requires it" if you never were there weeks at a time?

A. What I mean is, I can't settle my business in a few days. I go to Amsterdam or Germany—wherever I have business.

Q. Why did you say you were not in Antwerp a few weeks unless your business required it?

A. I go to different parts of Europe and come back to Ant-
189 werp. Antwerp has been my headquarters, and I stay there

a few days if I can do my business; if not, I go on and do otherwise.

Q. That is the only explanation of your answer, in which you said a few moments ago that you never stayed in Antwerp for a few weeks, except when your business required it?

A. I never have stayed in Antwerp for a few weeks.

Q. The Café Alsacienne is in Place Vert, in Antwerp, is it not?

A. So I have learned since.

Q. That is the most prominent square in Antwerp?

A. I think not.

Q. It is a very prominent square in Antwerp?

A. I don't know about that.

Q. It is the square the famous cathedral is very near?

A. It is a square which is full of small cafés.

Q. Do you mean to say, in all your nine years of trips to Antwerp, you never heard of the Café Alsacienne?

A. I never did.

Q. How many times have you met Von Hemmelrich?

A. Possibly three times.

Q. How did you come to meet him?

A. I met him at Coeterman's office.

Q. What was he doing in Coeterman's office?

A. About seven years ago one afternoon I was in Mr. Coeterman's office buying some goods, and we had just gotten through lunch. His office is at his home, and I generally take lunch with him about two o'clock.

Q. I don't care for the details. What was the occasion of Von Hemmelrich seeing Coeterman on the occasions that you were at Coeterman's house and met you there?

A. We had just taken lunch and the gentleman came in,
190 and we were drinking a cup of coffee, and he invited him with him and said, "This, Mr. Von Hemmelrich, is the gentleman who has a nice retail store in Antwerp."

Q. You knew perfectly well Von Hemmelrich buys his diamonds of Coeterman, or a portion of them?

A. I did not.

Q. You knew he had business transactions with Coeterman?

A. I understand that he has.

Q. Prior to 1892 you did not import any stones at all, did you?

A. Certainly.

Q. To any great extent?

A. I do not know how much.

Q. Is it not a fact that until the Coeterman-Henrickson-Keck Company was formed and Coeterman became a partner in it that you commenced to import diamonds to any extent?

A. No, sir.

Q. How long have you been importing?

A. Eight or nine years I have been importing somewhat.

Q. Your importations have very largely increased in the last three years, since Coeterman was in the firm?

A. Since we started cutting there has been more goods imported and put through the custom-house.

Q. What is Coeterman's interest in the firm?

A. He is a stockholder.

Q. To what extent?

A. We started with a capital of a little over $40,000, which we expected to increase.

Q. How much has Coeterman in that firm?

A. He has very little in it now, because he is drawing it out on account of this trouble.

191 Q. Why is he drawing it out?

A. He don't understand why I have nothing but trouble since I started cutting diamonds.

Q. Is that the best explanation why your partner should withdraw from the firm when you are under indictment?

A. That is the only explanation.

Q. He is getting out of the firm since your arrest?

A. Yes, sir; he is afraid——

Q. What is he afraid of?

A. There are certain parties who are prosecuting us, and who are trying to get us to quit the cutting business in Cincinnati, and they are making every effort.

By the COURT:

Q. Does that trouble frighten him away?

A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. He did not start to withdraw the money until you were arrested for smuggling; is not that a fact?

A. That is a fact.

Q. What interest had he just before your arrest; how much interest had he?

A. I think something like six thousand pounds.

Q. That is, $30,000?

A. Yes, sir.

Q. At that time your capital was $40,000?

A. Yes, sir.

Q. So he had $30,000 out of $40,000?

A. Yes, sir.

Q. Tell me why it is that in the articles of incorporation his name is not even mentioned? (Paper shown witness.)

A. He was not present to sign.

192 Q. Notwithstanding the fact that he has three-fourths of all the interest in his firm, his name is not even mentioned in the official paper filed with the secretary of the State of Ohio as having any interest at all.

The COURT: I do not see the relevancy of this. He is not charged with any crime here. That cannot affect this man, except the evidence that will bring the matter home to him.

By the DISTRICT ATTORNEY:

Q. How much interest has he now out of the $30,000?

(Objected to.)

Q. Translate that writing upon that piece of paper (paper shown witness).

A. I don't understand it.

Q. Do you mean to say you do not understand that?

A. Yes, sir; I don't understand it.

Q. What language is it written in?

A. It is either Flemish or Hollandish.

Q. Do you speak Flemish or Hollandish?

A. No, sir.

Q. How is it you were talking on that day to Von Hemmelrich in Flemish?

A. I didn't talk to Von Hemmelrich.

Q. What are the marks on that paper?

A. I do not know.

Q. You do not know what the signs are?

A. No, sir.

Q. What experience have you had in the signs that the diamond-cutters employ?

A. They don't employ any signs; they write.

Q. Who is the legal representative or lawyer of your firm in New York?

A. We have had Mr. Jones.

Q. Mr. Jones is a member of the Cincinnati bar?

A. He attends to most of my business.

193 Q. He is a member of the Cincinnati bar?

A. Yes, sir.

Q. My question is, who is your lawyer in the city of New York?

A. I have no special lawyer.

Q. Have not either you or your firms employed a lawyer in New York?

A. No, sir.

Q. Who is Mr. Martin?

A. I don't know Mr. Martin.

Q. You never heard of Mr. Martin?

A. No, sir.

Q. You never heard of him in connection with this matter?

A. No, sir.

Q. Do you say that upon your oath?

A. I do.

Q. What was Mr. Jones doing in New York? You say in connection with legal business connected with your company?

A. He was taking some testimony.

Q. In what matter?

A. In same labor cases.

Q. Who was your local counsel in new York in that matter?

A. We have no local counsel. Mr. Jones may have some assistance from attorneys, but outside of that I do not know.

Q. Do you not know Mr. Jones has a New York attorney as his assistant?

A. Mr. Jones has talked with several attorneys there.

Q. You know that from Mr. Jones?

A. Yes, sir.

Q. What is the name of the firm in New York associated with him for you?

A. I don't think there is an associate.

Q. Did you not say a moment ago Mr. Jones told you there was a member of the New York bar associated with him?

194 A. I told you Mr. Jones had several times consulted with attorneys there.

Q. Did he not tell you whom they were?

A. I think so.

Q. Whom did he tell you they were?

A. A party in the Mills' building; I can't think of his name just now.

By Mr. SHIELDS:

Q. Is it Lawton?

A. Francis Lawton.

By the DISTRICT ATTORNEY:

Q. Do you not know Mr. Martin is connected with that firm?

A. I know nothing about the affairs of Mr. Martin.

Q. If you say that Mr. Jones happened to be in New York on business, and it was a pure accident that he was at the dock, I would like to know how he happened to be right at the dock as the "Aller" came in?

A. I suppose he knew I was coming.

Q. How did he know that you were coming on the "Aller"?

A. I don't know.

Q. Had you not cabled to this country that you were coming on the "Aller"?

A. I cabled the name of the steamer; that is all.

Q. Mr. Jones knew therefore that you were going to be on the "Aller"?

A. He would have no trouble in finding out from Cincinnati.

Q. And he met you just as the boat came into the dock?

A. Yes, sir.

Q. What was his purpose in meeting you?

A. He said, "How do you do? Did you have a nice trip?"

Q. That was all, was it?

A. Yes, sir. I said, "Yes; I will try and hurry my baggage;" then those other gentlemen walked right in.

Q. What hour was it?

A. It seems to me it was nearly ten o'clock.

195 Q. How many passengers were on the "Aller"?

A. I think there were ninety.

Q. I mean first-cabin passengers?

A. That you can't say. They put them in the passenger list both first and second, I believe.

Q. Do I understand you to say that until you met Captain Loesewitz at the hearing that you had never seen him?

A. Yes, sir.

Q. You had never heard of him?

A. No, sir.

Q. Knew nothing about him?

A. No, sir.

Q. I understand you also that until that day that Gallen came on board the "Aller" and asked you whether your name was "Keck," and you said it was, that you never saw Mr. Gallen?

A. I had never seen Mr. Gallen.

Q. He was a total stranger to you?

A. Yes, sir.

Q. How long was it after six o'clock that you met Mr. Van Reeth in that hotel in Antwerp?

A. He was standing at the entrance of the hotel as I came from the hotel.

Q. What time was it?

A. Shortly after six o'clock.

Q. How do know that? How much after six o'clock?

A. The train gets in about that time.

Q. You have been to Europe since you were indicted?

A. No, sir; I am only indicted since last Monday.

Q. You have been to Europe since you were arrested?

A. Yes, sir.

Q. You went to Antwerp?

196 A. Yes, sir.

Q. How many days were you there?

A. I guess three or four days.

Q. And you saw Von Himmelrich?

A. I did, once.

Q. And you saw Coeterman?

A. Yes, sir; I went there purposely to see him.

Q. You went there to see him about this case?

A. No, sir; to see why he was not sending the rough, as he should.

Q. You did not go to see him about this case?

A. No, sir. We were not getting the rough so we could continue cutting, and I was over on that account. That was my special reason.

Q. That was all you talked about?

A. We talked about a good many things, naturally.

Q. What was the business reason why you should go to Antwerp to see Van Himmelrich, with whom you had no business?

A. I did not say I went to see him. I saw him. He came down to Coeterman's office.

Q. Where did you see him?

A. At Mr. Coeterman's.

Q. At Coeterman's office?

A. Yes, sir.

Q. Did you send for him?
A. Not that I know of.
Q. Would you recognize his writing?
A. I don't know his writing.

By Mr. SHIELDS:

Q. You say you had lunch at Mr. Coeterman's place. Mr. Coeterman's house and place of business are all in one?
A. Yes, sir.

197 By Mr. BECK:

Q. Where were you on January 21st?
A. In Antwerp.
Q. Were you there all that week?
A. I had gone to Hanau in the meantime, in Germany.
Q. When did you go to Hanau?
A. I think it was the 22nd or 23d.

Defense closed.

Government's Rebuttal.

FRANK LOESEWITZ having been recalled.

By the DISTRICT ATTORNEY:

Q. You have heard Mr. Keck testify. State whether or not the voice of Mr. Keck, as you heard it from that stand, is the voice of the man who gave you that package in Antwerp.
A. That is the voice.
Q. Have you any doubt about it?
A. No doubt.
Q. I want to ask you whether or not it is true that that man, F. Van Reeth, knew you and has known you in Antwerp?

(Objected to as already answered.)

Q. Now that you have seen Van Reeth upon the witness stand, which you had not when you testified, I want you to state upon your oath whether or not you ever recollect having seen him before.
A. I don't know him.
Q. Did you ever see him before today?
A. No, sir.

198 FREDERICK HENRICKSON sworn.

By Mr. SHIELDS:

Q. What do you propose to prove by this witness?
The DISTRICT ATTORNEY: To rebut facts brought out on cross-examination that a card was given to Captain Loesewitz upon which there was certain writing. This is the man who is alleged to have given the captain an order for these diamonds.

By the DISTRICT ATTORNEY:

Q. What is your business?
A. Jewelry business.
Q. How many years have you been in that business?
A. About ten years.
Q. Where is your place?
A. 71 Columbia street, Newark, New Jersey.
Q. Have you always been in business there?
A. Yes, sir.
Q. It has been stated here that you gave Captain Loesewitz a card with an order for certain diamonds. State whether that is true or not.
A. I did give Captain Loesewitz a card about a year ago in exchange for one of his.

By the COURT:

Q. What kind of a card?
A. A business card.
Q. Did it contain an order?
A. No, sir.

By the DISTRICT ATTORNEY:

Q. Was there any writing whatever upon it?
A. No, sir.
Q. You say it was about a year ago?
199 A. About a year ago.
Q. Was that the only occasion you ever gave him a card?
A. That was the only occasion.
Q. Did the captain ever bring over any diamonds for you?
A. No, sir.
Q. Did you ever ask him to?
A. No, sir.

Testimony closed.

And this was all of the evidence offered by both the plaintiff, The United States, and the defendant, Herman Keck.

200 And then and thereupon the defendant, Herman Keck, requested the court to give to the jury each and all of the following instructions, to wit:

The court is respectfully requested to give to the jury each of the following instructions:

No. 1. The jury are instructed that there is insufficient evidence introduced in this case to make out the charges against the defendant, Herman Keck, and they are therefore instructed to return a verdict of not guilty on both bills of indictment.

No. 2. The jury are instructed that there is insufficient evidence to make out a case against the defendant, Herman Keck, upon the first count of each bill of indictment, and they are therefore in-

structed to return a verdict of not guilty as to the first count of both bills of indictment.

No. 3. The jury are instructed that there is insufficient evidence to make out a case against the defendant, Herman Keck, upon the third count of each bill of indictment, and they are therefore instructed to return a verdict of not guilty as to the third count of both bills of indictment.

No. 4. The jury are instructed that there is insufficient evidence to make out a case against the defendant, Herman Keck, upon the second count of each bill of indictment, and they are therefore instructed to return a verdict of not guilty as to the second count of both bills of indictment.

201 No. 5. The jury are instructed that the defendant, Herman Keck, is charged with smuggling and clandestinely introducing into the United States the diamonds mentioned in the indictment. They are further instructed that although they believe from the evidence there was an intention to smuggle or clandestinely introduce into the United States the diamonds mentioned in the indictment, and that Captain Loesewitz received said diamonds with the intention of not invoicing the same or putting the same on his manifest and delivering same in America without paying duty thereon, and put the same in his state-room on the steamer Rhynland, where they remained until said Captain Loesewitz was called upon to deliver same to Revenue Officer Gallen, and that when delivered to Revenue Officer Gallen said Captain Loesewitz knew said Gallen to be a revenue officer, then and in that case there is merely an unexecuted intention to smuggle or clandestinely introduce and would not constitute the crime of smuggling or clandestinely introducing or attempting to bring in, and as to the crime so charged your verdict must be not guilty.

No. 6. The jury are instructed that as the first count in each bill of indictment insufficiently states any crime against the laws of the United States, said first count in each bill of indictment is to be entirely ignored by them and not considered.

No. 7. The jury are instructed that as the third count in each bill of indictment states that defendant, Herman Keck, imported
202 and brought into the United States, and assisted in so doing contrary to law, as is forbidden in section 3082 of the Revised Statutes of the United States, in this, that he violated section 2802 of the Revised Statutes, which prohibits a person concealing an article subject to duty in the baggage of a person arriving within the United States, which article was not at the time of making entry for such baggage mentioned to the collector, and the evidence in this case wholly fails to show the concealment of any article in baggage, your verdict must be not guilty as the third count in both bills of the indictment.

No. 8. The jury are instructed that the second count in each bill of indictment charges that the defendant, Herman Keck, smuggled and clandestinely introduced into the United States the diamonds mentioned in the indictment, but does not charge him with aiding and abetting therein; and as the section of the statute upon which

this count is based makes a distinction between the doing of an act and aiding and abetting therein, *and* therefore your verdict must be not guilty upon the second count of both bills of indictment.

No. 9. The jury are instructed to scrutinize the testimony of Captain Loesewitz and to consider any interest or bias he may have in the proceeding on trial.

No. 10. The jury are instructed that they will not be justified in finding a verdict of guilty, although there may be a preponderance of evidence of guilt. A preponderance of evidence of guilt
203 will not be sufficient in warranting the jury in finding a verdict of guilty, but the jury must be convinced beyond reasonable doubt, from the evidence, that the defendant, Herman Keck, is guilty as charged. Before the jury can find the defendant guilty the evidence must be consistent with every hypothesis of guilt and inconsistent with any hypothesis of innocence.

Very respectfully, FRANCIS B. JAMES,
A. S. L. SHIELDS,
Counsel for Defendant, Herman Keck.

204 *Answer of the Court to the Points Presented by the Defendant.*

Each point was read and answered as follows:

No. 1. The jury are instructed that there is insufficient evidence introduced in this case to make out the charges against the defendant, Herman Keck, and they are therefore instructed to return a verdict of not guilty on both bills of indictment.

First. This point is refused.

No. 2. The jury are instructed that there is insufficient evidence to make out a case against the defendant, Herman Keck, upon the first count of each bill of indictment, and they are therefore instructed to return a verdict of not guilty as to the first count of both bills of indictment.

To the second point the court answers, as it understands this point relates to the form of the counts to which it refers, it is denied.

No. 3. The jury are instructed that there is insufficient evidence to make out a case against the defendant, Herman Keck, upon the third count of each bill of indictment, and they are therefore instructed to return a verdict of not guilty as to the third count of both bills of indictment.

To the third point the court answers, the court understanding this point as being founded upon the same cause as that just referred to, the court also refuses to affirm it.

205 No. 4. The jury are instructed that there is insufficient evidence to make out a case against the defendant, Herman Keck, upon the second count of each bill of indictment, and they are therefore instructed to return a verdict of not guilty as to the second count of both bills of indictment.

The fourth point is disaffirmed for the same reason.

No. 5. The jury are instructed that the defendant, Herman Keck, is charged with smuggling and clandestinely introducing into the United States the diamonds mentioned in the indictment; they are

further instructed that although they believe from the evidence there was an intention to smuggle or clandestinely introduce into the United States the diamonds mentioned in the indictment, and that Captain Loesewitz received said diamonds with the intention of not invoicing the same or putting the same on his manifest and delivering same in America without paying duty thereon, and put the same in his state-room on the steamer Rhynland, where they remained until said Captain Loesewitz was called upon to deliver same to Revenue Officer Gallen, and that when delivered to Revenue Officer Gallen said Captain Loesewitz knew said Gallen to be a revenue officer, then and in that case there is merely an unexecuted intention to smuggle or clandestinely introduce, and would not constitute the crime of smuggling or clandestinely introducing or attempting to bring in, and as to the crime so charged your verdict must be not guilty.

The court refuses to affirm the fifth point.

206 No. 6. The jury are instructed that as the first count in each bill of indictment insufficiently states any crime against the laws of the United States said first count in each bill of indictment is to be entirely ignored by them and not considered.

The court disaffirms the sixth point.

No. 7. The jury are instructed that as the third count in each bill of indictment states that defendant, Herman Keck, imported and brought into the United States and assisted in so doing, contrary to law, as is forbidden in section 3082 of the Revised Statutes of the United States, in this, that he violated section 2802 of the Revised Statutes, which prohibits a person concealing an article subject to duty in the baggage of a person arriving within the United States, which article was not, at the time of making entry for such baggage, mentioned to the collector, and the evidence in this case wholly fails to show the concealment of any article of baggage, your verdict must be not guilty as to the third count in both bills of the indictment.

The court affirms the seventh point.

No. 8 The jury are instructed that the second count in each bill of indictment charges that the defendant, Herman Keck, smuggled and clandestinely introduced into the United States the diamonds mentioned in the indictment, but does not charge him with aiding and abetting therein, and as the section of the statute upon which this count is based makes a distinction between the doing of an act and aiding and abetting therein, *and* therefore your ver-

207 dict must be not guilty upon the second count of both bills of indictment.

The court disaffirms the eighth point.

No. 9. The jury are instructed to scrutinize the testimony of Captain Loesewitz and to consider any interest or bias he may have in the proceeding on trial.

The court affirms the ninth point.

No. 10. The jury are instructed that they will not be justified in finding a verdict of guilty, although there may be a preponderance of evidence of guilt. A preponderance of evidence of guilt will not

be sufficient in warranting the jury in finding a verdict of guilty, but the jury must be convinced beyond reasonable doubt, from the evidence, that the defendant, Herman Keck, is guilty as charged. Before the jury can find the defendant guilty the evidence must be consistent with every hypothesis of guilt and inconsistant with any hypothesis of innocence.

The court affirms the tenth point generally, but the meaning ascribed to it by the court is that the jury shall be fully convinced from a careful examination of all the testimony heard that the defendant is guilty of the smuggling charged, as testified to by Captain Loesewitz, and that if it is so convinced beyond room for reasonable doubt it will be justified in finding a verdict of guilty generally and should do so. If it is not thus convinced, the defendant is entitled to an acquittal and should be acquitted.

Defendant's counsel excepted to the refusal of the learned
208 judge to charge as requested in the first, second, third, fourth, fifth, sixth, and eighth points and the answer of the learned judge to the tenth point.

Charge of the Court.

BUTLER, *J.:*

GENTLEMEN OF THE JURY: The several statutory provisions under which the defendant is indicted have been read to you and are doubtless understood. I need not undertake to explain them or to dwell upon the law governing the case. It is sufficient to say in this respect that if the statements made here under oath by Captain Loesewitz respecting his receipt of the package of diamonds in Antwerp and bringing them here are true the defendant is guilty of the offense charged.

You have only to determine, therefore, whether it is true. The testimony on the part of the prosecution respecting it is mainly that of the captain himself. The circumstances surrounding him are such as to cast suspicions of guilt on him. He is under indictment for smuggling the diamonds. It may fairly be understood that he believes he is testifying in his own behalf. He stated before you that he hoped at least to improve his situation by appearing here and testifying to what he knows on the subject involved. If, therefore, he stood alone, unsupported, you would naturally and properly hesitate to convict the defendant on his testimony,
209 especially with the defendant's denial, which you have heard.

The Government claims, however, that the captain is corroborated in important particulars, and in such manner that it is not only safe to believe him, but that belief cannot be avoided. The points of corroboration and the matters on which they depend have been referred to and dwelt upon by the district attorney very fully, and I need not further allude to them.

On the defendant's behalf it is claimed not only that the captain is not corroborated, but is contradicted by the defendant's testimony here, as well as by that of young Van Reeth, and also by other facts in the case referred to, and commented upon by his counsel. He

has also produced evidence of good character, which you will consider. Now, from a very careful examination of all the testimony heard on both sides you must determine whether the defendant is guilty or not. If such an examination does not satisfy you beyond reasonable doubt of the defendant's guilt you must acquit him. If it does so fully satisfy you of his guilt you should convict him. The case is very important, and should receive great care at your hands.

There are two indictments and a number of counts in each. If the defendant is found on the evidence to have committed the offence charged in any of the counts he may be returned guilty in manner and form as he stands indicted.

Defendant's counsel then and there excepted to the following portion of the charge of the learned court, the jury being then and there at the bar of the court:

"It is sufficient to say in this respect that if the statements made here under oath by Captain Loesewitz respecting his receipt
210 of the package of diamonds in Antwerp and bringing them here are true the defendant is guilty of the offence charged."

Which said exception was then and there duly allowed by the court.

And thereupon, inasmuch as the affidavits, evidence, requests for instructions, points, charge of the court, and exceptions do not appear upon the records, the said counsel for the defendant, Herman Keck, did there and then tender this bill of exceptions to the ruling of the court upon the application for a *dedimus potestatem*, to the admission and rejection of evidence, to the refusal of the court at the close of plaintiff's testimony to instruct the jury to render a verdict of not guilty, to the refusal of the court to give each and all of the instructions requested by defendant, Herman Keck, and to the charge of the court to the jury and parts thereof, and to the opinion of the said court, and requested the signature and seal of the judge aforesaid should be put to this bill of exceptions, according to the form of the statute in such case made and provided; and thereupon the aforesaid judge, at the request of the said counsel for the defendant, Herman Keck, did put his signature and seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 9th day of June, A. D. 1896.

WM. BUTLER, [SEAL.]
Dist. Judge.

Agreed to.
JAMES M. BECK,
U. S. Attorney.

211 (*Assignment of Errors.*)

Received in district court and filed June 9th, 1896.

UNITED STATES OF AMERICA:

United States District Court, Eastern District of Pennsylvania.

UNITED STATES OF AMERICA
vs.
HERMAN KECK. } May Session, 1896. No. 20.

Assignment of errors.

Now comes the defendant, Herman Keck, in this action, — in connection with his petition for a writ of error makes the following assignments of errors, which he avers occurred upon the trial of the cause, to wit:

First. The court erred in overruling the motion of the defendant, Herman Keck, to quash each and all of the counts in the bill
212 of *of* indictment; to the overruling of which motion the defendant, Herman Keck, then and there excepted; which exception was duly allowed by the court.

Second. The court erred in overruling the demurrer of the defendant in each and all of the counts of the bill of indictment; to which ruling of the court defendant, Herman Keck, then and there excepted; which exception was then and there allowed by the court.

Third. The court erred in overruling and denying the application of defendant, Herman Keck, for a *dedimus potestatem* to take evidence in pursuance of section 866 of the Revised Statutes of the United States, which evidence was necessary to prevent a failure and delay of justice, and which evidence was to be obtained from witnesses in Antwerp, Belgium, and Amsterdam, Holland; to which ruling of the court *and* overruling *of* said application defendant, Herman Keck, then and there excepted, and which exception was duly allowed by the court.

Fourth. The court erred in sustaining the objection to and overruling the following questions asked by counsel for defend-
213 ant, Herman Keck, of the *of the* witness Frank Loesewitz, first produced by the Government, to wit:

"Q. Wasn't she (the Concha) seized for having on board smuggled goods?

Weren't smuggled goods found right next to your cabin?"

To which ruling of the court defendant, Herman Keck, then and there excepted; which exception was then and there duly allowed by the court.

Fifth. The court erred in overruling the objection made by counsel for defendant, Herman Keck, to the following question asked by the district attorney of the Government witness, John C. Gallen, on direct examination:

"Q. Did the captain give you a description of the man who gave the diamonds to him?"

To which ruling of the court defendant, Herman Keck, then and

there excepted; which exception was then and there allowed by the court.

Sixth. The court erred in overruling the objection made by the counsel for the defendant, Herman Keck, to the following questions asked by the district attorney of the Government witness, John C. Gallen, on direct examination:

214 "Q. I want to ask you whether it was possible for him, Keck, to have seen that there was no address on that package at the time?"

To which ruling of the court defendant, Herman Keck, then and there excepted; which exception was then and there duly allowed by the court.

Seventh. The court erred in overruling the objection made by counsel for defendant, Herman Keck, to the following question asked by the district attorney of the Government witness, John C. Gallen, on direct examination:

"Was the package held by you at that time so that Keck could see it?"

To which ruling of the court defendant, Herman Keck, then and there excepted; which exception was then and there duly allowed by the court.

Eighth. The court erred in sustaining the objection of the United States district attorney to the following question put to the witness Constant Van Reeth, a witness for the defendant, Herman Keck, to wit:

"Q. Was his name mentioned in the papers at the time he left?"

To which ruling of the court defendant, Herman Keck,
215 then and there excepted; which exception was duly allowed by the court; and thereupon defendant, Herman Keck, through Mr. Shields, of his counsel, offered to prove as follows, to wit:

"I offer to prove that at least one year and during a period of one year prior to the 27th day of January, 1896, the name of F. Van Reeth frequently appeared in the public prints of Antwerp and referred to by Captain Loesewitz in his testimony, and that it was well known through the public prints and by the knowledge that the people of Antwerp had that Mr. F. Van Reeth went to Cincinnati to engage in the diamond business."

And then and thereupon United States district attorney objected to said offer of proof; which objection the court sustained, and to which ruling of the court defendant, Herman Keck, then and there excepted; which exception was duly allowed by the court.

Ninth. The court erred in sustaining the objection of the district attorney to the following question put by counsel for defendant, Herman Keck, on the direct examination of Franz Van Reeth:

"Q. What do you do with the rough?"

To which ruling of the court defendant, Herman Keck,
216 then and there excepted; which exception was then and there duly allowed by the court, and then and thereupon Mr. Shields, of counsel for defendant, Herman Keck, made the following offer of proof, to wit:

"My purpose is to show that they deal wholly in rough diamonds; that they cannot make any use of the cut diamonds in their business, and to follow that up by the people who handle their goods and the people who have seen them, that they never had any of this kind of material in their place at all, so as to show that there was no motive on the part of these gentlemen to smuggle this stuff in."

Then and thereupon the district attorney objected to said offer of proof; which objection the court sustained, and then and thereupon defendant, Herman Keck, excepted; which exception was duly allowed by the court.

Tenth. The court erred in making the charge to the jury in refusing to state to said jury and give it the following instructions requested by defendant, Herman Keck, to wit:

"The jury are instructed that there is insufficient evidence
217 introduced in this case to make out the charges against the defendant, Herman Keck, and they are therefore instructed to return a verdict of not guilty on the bill of indictment."

To which refusal so to instruct the defendant, Herman Keck, then and there excepted; which exception was then and there duly allowed by the court.

Eleventh. The court erred in making the charge to the jury in refusing to state to it and give it the following instructions requested by the defendant, Herman Keck, to wit:

"The jury are instructed that there is insufficient evidence to make out a case against the defendant, Herman Keck, upon the first count of the bill of indictment, and they are therefore instructed to return a verdict of not guilty as to the first count of the bill of indictment."

To which refusal to so instruct the defendant, Herman Keck, then and there excepted; which exception was then and there duly allowed by the court.

Twelfth. The court erred in making the charge to the jury in refusing to state to it and give it the following instruction requested by defendant, Herman Keck, to wit:

"The jury are instructed that there is insufficient evidence to
make out a case against the defendant, Herman Keck,
218 upon the second count of the bill of indictment, and they are therefore instructed to return a verdict of not guilty as to the second count of the bill of indictment."

To which refusal to so instruct the defendant, Herman Keck, then and there excepted; which exception was then and there duly allowed by the court.

Thirteenth. The court erred in making the charge to the jury in refusing to state to it and give it the following instruction requested by the defendant, Herman Keck, to wit:

"The jury are instructed that the defendant, Herman Keck, is charged with smuggling and clandestinely introducing into the United States the diamonds mentioned in the indictment; they are further instructed that although they believe from the evidence there was an intention to smuggle or clandestinely introduce into the United States the diamonds mentioned in the indictment, and

that Captain Loesewitz received said diamonds with the intention of not invoicing the same or putting the same on his manifest and delivering the same in America without paying duty thereon, and put the same in his state-room on the steamer Rhynland,
219 where they remained until said Captain Loesewitz was called upon to deliver same to Revenue Officer Gallen, and that when delivered to Revenue Officer Gallen said Captain Loesewitz knew said Gallen to be a revenue officer, then and in that case there is merely an unexecuted intention to smuggle or clandestinely introduce and would not constitute the crime of smuggling or clandestinely introducing or attempting to bring in, and as to the crime so charged your verdict must be not guilty."

To which refusal to so instruct the defendant, Herman Keck, then and there excepted; which exception was then and there duly allowed by the court.

Fourteenth. The court erred in making the charge to the jury in refusing to state to it and give it the following instruction requested by the defendant, Herman Keck, to wit:

"The jury are instructed that, as the first count in the bill of indictment insufficiently states any crime against the laws of the United States, said first count in the bill of indictment is to be entirely ignored by them and not considered."

To which refusal to so instruct the defendant, Herman
220 Keck, then and there excepted; which exception was then and there duly allowed by the court.

Fifteenth. The court erred in making the charge to the jury in refusing to state to it and give it the following instructions requested by the defendant, Herman Keck, to wit:

"The jury are instructed that the second count in the bill of indictment charges that the defendant, Herman Keck smuggled and clandestinely introduced into the United States the diamonds mentioned in the indictment, but does not charge him with aiding and abetting therein, and, as the section of the statutes upon which this count is based makes a distinction between the doing of an act and aiding and abetting therein and therefor, your verdict must be not guilty upon the second count of the bill of indictment."

To which refusal to so instruct the defendant, Herman Keck, then and there excepted; which exception was then and there duly allowed by the court.

Sixteenth. The court erred in making the charge to the jury in refusing to state to it and give it the following instructions requested by defendant, Herman Keck, to wit:

221 "The jury are instructed that they will not be justified in finding a verdict of guilty, although there may be a preponderance of evidence of guilt; a preponderance of evidence of guilt will not be sufficient in warranting the jury in finding a verdict of guilty, but the jury must be convinced beyond reasonable doubt from the evidence that the defendant, Herman Keck, is guilty as charged. Before the jury can find the defendant guilty the evidence must be consistent with every hypothesis of guilt and inconsistent with any hypothesis of innocence."

To which refusal to so instruct the defendant, Herman Keck, then and there excepted, which exception was then and there duly allowed by the court, and the court thereupon said it would give a modification of said instruction so requested, and defendant, Herman Keck, thereupon requested the court to give said instructions as asked, which request the court refused, and to which refusal and ruling of the court defendant, Herman Keck, then and there excepted; which exception was then and there duly allowed by the court.

Seventeenth. The court erred in charging the jury, among
222 other things, as follows, to wit:

"It is sufficient to say in this respect that if the statements made here under oath by Captain Loesewitz respecting his receipt of the package of diamonds in Antwerp and bringing them here are true, the defendant is guilty of the offence charged."

To which portion of said charge defendant, Herman Keck, then and there excepted while the jury was still at the bar of the court.

Eighteenth. The court erred in overruling the motion of defendant, Herman Keck, to grant him a new trial; to which ruling of the court defendant, Herman Keck, then and there excepted; which exception was then and there duly allowed by the court.

Nineteenth. The court erred in overruling the motion in arrest of judgment of defendant, Herman Keck; to which ruling of the court defendant, Herman Keck, then and there excepted; which exception was then and there duly allowed by the court.

A. S. L. SHIELDS,
FRANCIS B. JAMES,
Counsel for Defendant, Herman Keck.

JAMES & JAMES, *Attorneys.*

223 (*Petition of Defendant for Writ of Error.*)

Received in district court & filed June 12th, 1896.

UNITED STATES OF AMERICA:

Supreme Court of United States.

HERMAN KECK, Plaintiff in Error,
vs.
UNITED STATES OF AMERICA, Defendant in Error. } May Sess., 1896. No. 20.

Petition of Herman Keck for writ of error.

The petition of Herman Keck respectfully represents as follows, to wit:

That he was indicted in the district court of the United States for the eastern district of Pennsylvania upon a bill of indictment of May sessions, 1896, No. 20; which said indictment was under sections 2865, 3082, and 2802 of the Revised Statutes of the United
224 States, and charged that your petitioner, Herman Keck, knowingly and unlawfully imported into the United States diamonds contrary to law, and smuggled and clandestinely

introduced diamonds and imported diamonds contrary to law, in this, to wit, that he concealed the same.

That on the 26th day of May, 1896, your petitioner, Herman Keck, was arraigned upon said indictment in said court and pleaded "not guilty" to the charges contained in said indictment, and thereupon a jury was called and impanelled and your petitioner was tried before said jury, and on the 29th day of May, 1896, the said jury returned a verdict of guilty.

Your petitioner, Herman Keck, shows that it was claimed upon the part of the United States that while in Antwerp, Belgium, in January, 1896, that your petitioner procured one Van Hemelrich to entrust diamonds to one Captain Loesewitz to be carried into the United States, and your petitioner shows that it was necessary for him to take evidence in Antwerp, Belgium, and Amsterdam, Holland, in order to establish his innocence, which taking of testimony is provided for under the provisions of section 866 of the Revised Statutes of the United States, but the court denied the appli-
225 cation of the provisions of said section to criminal proceedings, and your petitioner was thereafter forced to go to trial without said evidence; that said evidence was necessary and justice required that said dedimus should issue, but the court denied said application.

That at said trial the learned judge refused to allow certain questions to be put to Captain Loesewitz upon cross-examination to impeach his character and to show him to be a notorious smuggler, and refused to allow certain questions to be put to show his knowledge of the name F. Van Reeth, and allowed hearsay testimony to be given by John C. Gallen as to conversations had between John C. Gallen and Captain Loesewitz one day after the arrest of Captain Loesewitz, which conversation related to the identity of Mr. Keck, the petitioner, and the testimony of Captain Loesewitz and your petitioner, Mr. Herman Keck, being in direct conflict, the court refused to allow evidence to be introduced to show that Mr. Keck had no motive to commit the alleged crime of smuggling and unlawful importing, which evidence was admissible to show lack of
226 motive, and was further admissible as relevant to show which story was more probable, that of Mr. Keck, your petitioner, or that of Captain Loesewitz.

That at said trial the learned judge was requested to instruct the jury to return a verdict for defendant of not guilty, which the court ought to have done, as the alleged crime, if any, was not within the jurisdiction of the court; that the alleged crime was not complete; that no attempt was shown by the evidence, and that if there was any intention to smuggle the intention was unexecuted and no attempt was yet made to execute the same; and the court was further asked to instruct the jury to ignore the first count in the indictment, as it charged no crime; and the court was further asked to instruct the jury to find the defendant, Herman Keck, not guilty on the second count because the charge therein made had no evidence in support thereof, all of which said requests the court refused to make and give to the jury.

That exceptions were taken to the general charge of the court wherein the jury was charged that if they believed the story
227 of Captain Loesewitz they must find the defendant guilty.

Your petitioner further shows bill of exceptions has been duly presented to and signed and sealed by the learned judge and filed of record in said court, and further shows that assignment of errors has been duly filed with the clerk of said district court of the United States in accordance with the rules of the Supreme Court of the United States.

Your petitioner further shows that the learned trial court further erred in overruling motions to quash the indictment, demurrers to the indictment, motion for a new trial, and motions in arrest of judgment, all of which appear in the record of said cause and in said assignment of errors.

Wherefore your petitioner, Herman Keck, prays that a writ of error may be allowed in the premises, directed to the district court of the United States for the eastern district of Pennsylvania, and that a citation be issued returnable within thirty days upon the entry of security in whatever sum may be directed; that a supersedeas may be granted and a stay of execution of pro-
228 ceedings in the court below pending such writ of error or appeal, and that your petitioner may be admitted to bail in such sum as the district judge for the eastern district of Penna. may direct.

HERMAN KECH,
By AUGUST H. BODE,
A. S. L. SHIELDS,
FRANCIS B. JAMES, *Counsel.*

AUGUST H. BODE,
A. S. L. SHIELDS,
JAMES & JAMES,
Attorneys.

229 (*Order Allowing Writ of Error and Granting Supersedeas, &c.*)

Received in district court and filed June 12, 1896.

UNITED STATES OF AMERICA:

United States Supreme Court.

HERMAN KECK, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

And now, to wit, this 9th day of June, A. D. 1896, the petition of Herman Keck, praying for a writ of error to the district court of the United States for the eastern district of Pennsylvania, having been read and considered, and the rules of court having been complied with as to the filing with the court below assignments of error, it is ordered that a writ of error be allowed, and that a citation do issue, addressed as prayed for, returnable within thirty days here-

after upon the entry of security in the sum of one thousand dollars; that a supersedeas be granted and a stay of proceedings and execution of sentence imposed by the court below pending this writ
230 of error, and that the said petitioner, Herman Keck, be admitted to bail upon giving bond in such sum as the district judge for the eastern district of Pennsylvania shall direct.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

And a supersedeas bond of the defendant, with surety in the sum of one thousand dollars, approved by the justice of the Supreme Court, being filed, is in the words and figures following, to wit:

231 (*Bond on Writ of Error.*)

Know all men by these presents that we, Herman Keck, as principal, and The Fidelity and Deposit Company of Maryland, as sureties, are held and firmly bound unto the United States of America in the full and just sum of one thousand dollars, to be paid to the said United States of America, their certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this tenth day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a session of district court of the United States for the eastern district of Pennsylvatia, in the month of May, 1896, in a suit depending in said court between The United States of America, plaintiff, and the said Herman Keck, defendant, in a certain bill of indictment of May sess., 1896, No. 20, upon which issue was joined and a trial had before Hon. William Butler, judge of said court, and a jury called and empanelled in said cause, and such proceedings were had that on the 29th day of May, A. D. 1896, a verdict of guilty was rendered against the said defendant, and the said Herman Keck was sentenced to pay a fine of two hundred dollars and be imprisoned in the Eastern penitentiary of the Commonwealth of Pennsylvania for the term of one year and pay the costs of prosecution, and the said defendant, Herman Keck, considering that manifest errors have happened in said trial, to his great prejudice, having presented his petition for a writ of error to the Hon. George Shiras, Jr., of the United States Supreme Court, & having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the verdict in the aforesaid suit, and a citation, directed to the clerk of the district court of the United States for the eastern district of Pennsylvania, commanding him to return the record, so that it be and appear at a Supreme Court of the United States to be holden at the city of Washington, within thirty days:

Now, the condition of the above obligation is such that if the said Herman Keck shall prosecute his writ of error to effect and answer

all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HERMAN KECK. [SEAL.]
FIDELITY & DEPOSIT CO. OF MD.
[Seal of Comp'y.]
HERMAN HOOPES, *General Agent.*

Seal attached by Herman Hoopes.

Sealed and delivered in the presence of—

—— ——.

Approved by—
JOHN M. HARLAN,
Asso. Justice Sup. Ct. U. S.

232 (*Order of the District Court for the Release of Defendant upon Entry of Bail with Surety in* $10,000.)

Entered June 12th, 1896.

Eastern District of Pennsylvania.

THE UNITED STATES *vs.* HERMAN KECK. } Indictment. No. 20. May Sess., 1896.

And now, to wit, on June 12, A. D. 1896, a writ of error having been allowed in the above case by the Honorable George Shiras, Jr., justice of the Supreme Court of the United States, from the judgment of the district court, and it having been ordered that the defendant be released on bail pending the final determination of the proceedings on said writ of error, and a bond and surety—"The Equitable Trust Company"—in ten thousand ($10,000) dollars having been approved by this court, it is ordered that upon the
233 execution of the said bond by the said Herman Keck, defendant, and said surety before the clerk of the court he be forthwith released from imprisonment and discharged from the custody of the warden of the eastern penitentiary of the Commonwealth of Pennsylvania.

And afterwards, on the 12th day of June, 1896, it appearing that the defendant and said surety had executed said bond, he is discharged from present custody of the warden of the eastern penitentiary of the Commonwealth of Pennsylvania.

The recognizance of the defendant, with surety in ten thousand dollars, being entered accordingly, is in the words and figures following, viz:

234 UNITED STATES, } *ss:*
Eastern District of Pennsylvania, }

We, Herman Keck, residing at No. 616 Lexington avenue, Newport, in the State of Kentucky, and "The Equitable Trust Company," having its office at No. 624 Chestnut street, in the city of

Philadelphia and State of Pennsylvania, acknowledge ourselves to be jointly and severally indebted unto the United States of America in the sum of ten thousand dollars, lawful money of the United States of America, to be levied of our goods and chattels, lands and tenements, upon this condition, that if the said Herman Keck, the defendant, upon whose application a writ of error has been allowed by the Supreme Court of the United States and is now pending, shall be and appear at the district court of the United States for the eastern district of Pennsylvania, upon the determination of the proceedings on said writ of error and the receipt and filing of a mandate or other process or certificate showing the disposition thereof by the Supreme Court, or within five days thereafter, to answer and obey whatever final order or judgment shall be made in the premises, and not depart said court without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

HERMAN KECK. [L. S.]
THE EQUITABLE TRUST CO.,
By DAN'L DONOVAN, *Vice-President.*

[Seal of Company.]

Attest: A. H. O'BRIEN,
Trust Officer.

Taken, acknowledged, and subscribed this 12th day of June, A. D. 1896, in open court.

CHARLES S. LINCOLN,
Clerk District Court.

235 UNITED STATES OF AMERICA, } *sct:*
Eastern District of Pennsylvania, }

I, Charles S. Lincoln, clerk of the district court of the United States for the eastern district of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of the record and proceedings in the said court in a certain criminal cause therein lately depending, to wit, "Indictment No. 20, May sessions, 1896, The United States of America against Herman Keck, defendant," as full and entire as the same now remain among the records of said court in my office, with copy of petition for writ of error, of the assignment of errors, and of the bond on writ of error.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said district court, at Philadelphia, this second day of July, in the year of our Lord one thousand eight hundred and ninety-six, and in the one hundred and twentieth year of the Independence of the United States.

Seal of the District Court of the United States, E. D. Penna.

CHARLES S. LINCOLN,
Clerk District Court United States.

236 Form No. 1.

The Western Union Telegraph Company.

Incorporated.

21,000 offices in America. Cable service to all the world.

This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message.

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of unrepeated messages, beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

This is an unrepeated message, and is delivered by request of the sender, under the conditions named above.

THOS. T. ECKERT,
President and General Manager.

Number.	Sent by—	Rec'd by—	Check.
569	Gi.	Jr.	11; collect; ans.

[On the margin:] 221, 124, 1 p.

Received at Corcoran b'ld'g, S. E. cor. 15th & F Sts., Washington, D. C., 12.35 p. m.

Dated Pittsburg, Pa., 11.

JUNE 11, 1896.

To August H. Bode, Wash'n, D. C.:

Justice Shiras gone to mountains of West Virginia for ten days.

W. K. SHIRAS.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the eastern district of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between The United States, plaintiff, and Herman Keck, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme

Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Seal of the Supreme Court of the United States.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] No. 20. May sess., 1896, of indictments. District court U. States, eastern district of Penna. The United States *vs.* Herman Keck. Indictment No. 20, May sess., 1896. Writ of error from the Supreme Court of the United States. Received June 12th, 1896, in clerk's office dist. ct. U. S.

237 UNITED STATES OF AMERICA, *ss:*

To the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern district of Pennsylvania, wherein Herman Keck is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this 11th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

238 [Endorsed:] No. 20. May sess., 1896, of indictments. District court U. States, eastern district of Penna. The United States *vs.* Herman Keck. Indictment No. 20. May sess., 1896. Citation on writ of error and of acceptance of service by the attorney of the United States. Service accepted June 12, 1896 (12th). Harry K. Nevett, ass't U. S. att'y.

Endorsed on cover: Case No. 16,330. E. Pennsylvania D. C. U. S. Term No., 551. Herman Keck, plaintiff in error, *vs.* The United States. Filed July 7, 1896.